

No. 13313

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United States  
Court of Appeals  
for the Ninth Circuit.

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JACK C. ANDERSON, SR., and JACK C.  
ANDERSON, JR., Co-partners, Doing Busi-  
ness as Anderson & Son Transportation Co.,  
Appellants,

vs.

A. E. OWENS, FERN OWENS, and R. F.  
OWENS, Co-partners, Doing Business as  
Owens Brothers,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court  
for the Territory of Alaska  
Third Division

FILED

JUL 21 1952

PAUL P. O'BRIEN  
CLERK



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Third Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

CHADWICK, CHADWICK & MILLS,  
Seattle, Washington;

JOHN E. MANDERS,  
Anchorage, Alaska;

FAULKNER, BANFIELD & BOOCHEVER,  
Juneau, Alaska,

Attorneys for Plaintiffs.

DAVIS & RENFREW,  
Anchorage, Alaska,

Attorneys for Defendants.



In the District Court for the Territory of Alaska,  
Third Judicial Division

No. A-5226

A. E. OWENS, FERN OWENS and R. F.  
OWENS, Co-Partners, Doing Business as  
OWENS BROTHERS,

Plaintiffs,

vs.

JACK C. ANDERSON, SR., and JACK C. AN-  
DERSON, JR., Co-Partners, Doing Business  
as ANDERSON & SON TRANSPORTA-  
TION CO.,

Defendants.

### COMPLAINT FOR DAMAGES

Comes now the plaintiffs above named and for  
cause of action against defendants allege as follows:

#### I.

That at all times herein mentioned, plaintiffs,  
A. E. Owens, Fern Owens and R. F. Owens, were  
and now are co-partners, doing business as Owens  
Brothers, at Ketchikan and Hood Bay, Alaska, and  
during all of said times were engaged in the busi-  
ness of producing, logging and transporting of  
lumber.

#### II.

That at all times herein mentioned, defendants  
Jack C. Anderson, Sr., and Jack C. Anderson, Jr.,  
were and now are co-partners, doing business as

Anderson & Son Transportation Co., at Seldovia, Alaska, and elsewhere.

### III.

That said defendants knowing of the business in which the plaintiffs were and are engaged, and knowing that plaintiffs were desirous of purchasing one TP 100 Army Tug and Passenger Boat to be used in said business, sold and delivered to the plaintiffs on or about the 1st day of April, 1947, said TP 100 Army Tug and Passenger Boat to be used in their said business to the knowledge of the defendants, and the defendants then and there warranted the same to be in all respects fit and proper for such use, and the plaintiffs paid to defendants therefor the sum of \$25,000.00 in the manner following:

Five thousand dollars (\$5,000.00) paid by plaintiffs to defendants at said time and the balance of twenty thousand dollars (\$20,000.00) secured by promissory note bearing interest at 8% per annum, payable at the rate of two thousand dollars (\$2,000.00) per month, plus interest on the unpaid balances at the rate of 8% per annum; and, further, said promissory note to be further secured by a mortgage of said vessel.

### IV.

That plaintiffs relied upon said warranty and attempted to make use of said vessel for the purpose aforesaid, but that when examination was made of said vessel, including its hull, it was ascertained that the same was not fit for or in a sea-

worthy condition to perform or engage in the purpose for which the same was purchased by plaintiffs.

## V.

That as soon as said unfitness was ascertained, plaintiffs notified defendants thereof and of the estimated damages resulting therefrom, consisting of repair to scarred crank pin; it was determined that the main bearings were melted, that the shaft had been run on bare metal, scarring and badly twisting the shaft and necessitating the installation of a new shaft, and that the forefoot of said vessel had been extensively damaged, requiring complete replacement, and further that the forefoot had been driven back into the keel of said vessel, and by reason of the same the hull was in a leaking condition. From the time of the acquisition of the said vessel until August 5, 1947, when the said vessel was fit for the use intended, a period of approximately 105 days, plaintiffs were deprived of such use (allowance of 30 days for ordinary repairs, leaving 75 days actual loss of use). That during said period plaintiffs produced at their lumber camp in Alaska approximately seven million board feet of logs for which plaintiffs paid the sum of \$4.00 per thousand for towing the same from Ernest Sound to Sitka, Alaska. And that had plaintiffs had the use of said vessel during said period, at least five and one-half million board feet of said logs would have been towed by said vessel from Ernest Sound to Sitka, Alaska. That by reason of plaintiffs being deprived of the use of said

vessel during said period of time for towing of said logs, plaintiffs would have received a gross profit of approximately \$22,000 and a net profit of approximately \$11,000.

#### VI.

That plaintiffs incurred further expenses in the sum of \$934.00 in making trips from Alaska to Seattle and return which were necessitated in order to counsel with the shipyard where the repairs to said vessel were being made and carried on, and the machinists who were making said repairs, all of which would have been unnecessary had the said vessel been in condition as represented.

#### VII.

That the net costs to plaintiffs of repairs to said vessel in addition to the profit of \$11,000 which would have been made had said vessel been in condition to perform the services for which purchased, amount to \$21,239.32.

That at the time of the sale aforesaid, defendants represented and warranted to plaintiffs that the said vessel so sold was in sound and seaworthy condition with the exception of one scarred crank pin and bruised forefoot, for which an allowance of \$5,000.00 was made by defendants to plaintiffs on the purchase price of \$30,000.00. That in truth and in fact said vessel was unseaworthy and unsound and of these facts plaintiffs were ignorant of the falsity of such representations and warranties by defendants and said plaintiffs relied on such



representations and warranties in the purchase of said vessel.

### VIII.

That at the time of said sale of said vessel by defendants to plaintiffs, defendants well knew that said vessel was not seaworthy and sound for the purpose and business in which plaintiffs were engaged, and by such misrepresentations defendants had induced plaintiffs to purchase said vessel and plaintiffs were misled and injured thereby and have sustained damages by reason of the premises to the amount of \$32,239.32.

### IX.

That the defendants borrowed a lifeboat from the said TP 100 Army Tug, which said lifeboat, although agreed by defendants to be returned, has not been so returned to said tug or to plaintiffs, and plaintiffs have suffered damage in the value thereof, which was, and is, the sum of one thousand dollars (\$1,000.00).

### X.

That plaintiffs have been deprived of the use of said TP 100 Army Tug during the period of repairs thereto for a period of seventy-five (75) days, and that the sum of one hundred dollars (\$100.00) per day is a reasonable sum to be allowed plaintiffs for the loss of use of said vessel.

### XI.

That the sum of seventy-five hundred dollars (\$7,500.00) is a reasonable amount to be allowed

plaintiffs as attorneys' fees for the prosecution of this action.

Wherefore, plaintiffs pray judgment against defendants, and each of them,

1. For the sum of \$40,739.32 damages;
2. Attorneys' fees in the sum of \$7,500.00;
3. Costs of Court, and
4. Such further relief as to the Court shall seem meet and just in the premises.

/s/ JOHN E. MANDERS,  
Attorney for Plaintiffs.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 19, 1948.

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[Title of District Court and Cause.]

### ANSWER

Come now Jack C. Anderson, Sr., and Jack C. Anderson, Jr., co-partners, doing business as Anderson & Son Transportation Company, the above-named defendants, and by way of answer to the plaintiffs' complaint, admit, deny and allege as follows:

#### I.

Defendants have no knowledge or information sufficient to form a belief concerning the allegations of the first paragraph of plaintiffs' complaint and

for that reason deny each and all of such allegations.

## II.

Defendants admit the allegations of the second paragraph of plaintiffs' complaint.

## III.

Defendants admit that on or about the first day of April, 1947, they sold to the plaintiff the tug described in the third paragraph of plaintiffs' complaint, at the price therein set forth, and that the balance of the purchase price was to be secured by a mortgage of the vessel, and deny each and all the other allegations of the third paragraph of the plaintiffs' complaint.

## IV.

In answer to the fourth paragraph of plaintiffs' complaint, defendants allege that they made no warranty concerning the conditions of the vessel or of its fitness for any job contemplated by the plaintiffs, and allege that such vessel was sold strictly on an "as is" basis, and that they had no knowledge concerning plaintiffs' contemplated use for the vessel. Defendants further allege that in negotiating the sale of the vessel and at the request of plaintiffs, the price of the vessel was reduced below the sale price originally quoted by the defendants by reason of the fact that on an inspection by the plaintiffs, the scarred crank pin and the damaged forefoot were discovered by the parties, and defendants alleged that the vessel was purchased by the plaintiffs after an inspection of the

vessel, and with full knowledge on the part of the plaintiffs as to the condition of the vessel and its fitness for their operations.

#### V.

Defendants admit that the vessel above described, when sold to plaintiffs, had a scarred crank pin and that the forefoot had been damaged, and allege that plaintiffs had full knowledge of such defects at the time of purchasing the vessel and that plaintiffs purchased the vessel at a reduced price because of such defects. Defendants deny each and all the other allegations of the fifth paragraph of plaintiffs' complaint, except the allegations concerning amount and extent of repairs, and alleged loss of use and alleged loss of profit, and as to those allegations defendants have no knowledge or information sufficient to form a belief thereon, and therefore deny the same.

#### VI.

Defendants have no knowledge or information concerning the allegations of the sixth paragraph of plaintiffs' complaint, and therefore deny each and all of such allegations, save the allegation of misrepresentation, by defendants, which is denied. In that connection, defendants allege that if the plaintiffs incurred the expense set forth in such paragraph, that such expense was not incurred because of any action or representation or misrepresentation, of the defendants.

## VII.

Defendants have no knowledge or information concerning the allegations of the seventh paragraph of plaintiffs' complaint having to do with the cost of repairs and alleged damages, and therefore deny each and all of such allegations. Defendants admit that an allowance of five thousand dollars (\$5,000.00) was made to plaintiffs by defendants on the purchase price of the vessel by reason of the defects noted in plaintiffs' complaint. Defendants deny all the other allegations of the seventh paragraph of plaintiffs' complaint.

## VIII.

Defendants deny each and all the allegations of the eighth paragraph of plaintiffs' complaint, and allege they made no representations to plaintiffs as to the condition of the vessel or its fitness for the work contemplated by the plaintiffs. Defendants further allege that plaintiffs had a full opportunity to inspect the vessel before purchasing the same, that plaintiffs did inspect the vessel before purchasing the same, and allege that if plaintiffs were damaged, such damage is not imputable to the defendants.

## IX.

Defendants deny each and all the allegations of the ninth paragraph of plaintiffs' complaint.

In answer to the allegations of paragraph IX of plaintiffs' complaint, defendant admits that he borrowed a lifeboat from plaintiffs, which was to be returned to the Olsen and Wing Shipyards in

Seattle, Washington, and the defendant further advises that said lifeboat was returned in accordance with the agreement.

### X.

Defendants have no knowledge or information concerning the allegations of the tenth paragraph of plaintiffs' complaint and for that reason deny each and all of such allegations and in that connection allege that if in fact the plaintiffs were denied the use of the vessel described in plaintiffs' complaint for a period of seventy-five (75) days or for any other period, such loss of use was not the result of any action by the defendants.

### XI.

Defendants deny each and all the allegations of the 11th paragraph of plaintiffs' complaint.

Wherefore, having fully answered plaintiffs' complaint, defendants pray that plaintiffs take nothing thereby, and that defendants have and recover of and from the plaintiffs defendants' costs and disbursements in this action incurred, including a reasonable attorney's fee to be set by the Court.

DAVIS & RENFREW,

Attorneys for the Defendants.

By /s/ WILLIAM W. RENFREW.

United States of America,  
Territory of Alaska,  
Third Judicial Division—ss.

William W. Renfrew, being first duly sworn, upon his oath deposes and says: I am one of the attorneys for the defendants named in the above-entitled action; I make this affidavit of verification on behalf of such defendants for the reason that neither of the parties defendant are now at Anchorage, Alaska, the place where such verification is being made; I have read the foregoing Answer, know the contents thereof, and the matters and things therein contained are true as I verily believe.

/s/ WILLIAM W. RENFREW.

Subscribed and sworn to before me this 10th day of February, 1949.

[Seal] /s/ MILDRED MORIARITY,  
Notary Public for Alaska.

My Commission expires 12/20/50.

Service of Copy acknowledged.

[Endorsed]: Filed February 11, 1949.

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[Title of District Court and Cause.]

### NOTICE

Notice Is Hereby Given, in accordance with the provisions of Rule 31 of the Rules of Civil Pro-

cedure for the District Courts of the United States, that the deposition of Howard A. Dent, now of Route 1, Box 316, Scottsdale, Arizona, will be taken as a witness for the plaintiffs in the above-entitled action, by means of written interrogatories before Ralph A. Phillips, a Notary Public in and for the State of Arizona, whose address is Phoenix National Bank Building, Phoenix, Arizona.

Attached hereto is a true and correct copy of the direct interrogatories propounded by the plaintiffs.

Dated at Anchorage, Alaska, this 27th day of January, 1951.

FAULKNER, BANFIELD &  
BOOCHEVER.

By R. BOOCHEVER.

/s/ JOHN E. MANDERS,  
Attorneys for Plaintiffs.

(Copy)

[Endorsed]: Filed Feb. 10, 1951.

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[Title of District Court and Cause.]

DIRECT INTERROGATORIES PROPOUNDED  
TO HOWARD A. DENT

1. What is your name?
2. What is your occupation?
3. Do you know A. E. Owens?
4. During the spring of 1947, did you meet Jack C. Anderson, Sr., of the firm of Anderson & Son Transportation Co. of Seldovia, Alaska?



5. During the spring of 1947, were you present at a conversation between A. E. Owens and Jack C. Anderson, Sr.?

6. If so, where did such conversation take place?

7. If your answer to Question 5 is in the affirmative, to the best of your recollection, what was said at that conversation?

Dated at Anchorage, Alaska, this 27th day of January, 1951.

FAULKNER, BANFIELD &  
BOOCHEVER.

By R. BOOCHEVER.

/s/ JOHN E. MANDERS,  
Attorneys for Plaintiff.

(Copy)

[Endorsed]: Filed Feb. 10, 1951.

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[Title of District Court and Cause.]

ANSWERS TO DIRECT INTERROGATORIES  
PROPOUNDED TO HOWARD A. DENT

Pursuant to Notice of taking deposition, dated at Anchorage, Alaska, the 27th day of January, 1951, in accordance with Rules 30 and 31 of the Rules of Civil Procedure for the District Courts of the United States which are in effect in the Territory of Alaska, personally appeared before me the undersigned Notary Public in and for the County of Maricopa, State of Arizona, Howard A. Dent, a

witness for plaintiffs in the within action, who, being first duly sworn to testify the truth and nothing but the truth, was examined as follows and made answers as follows to the Interrogatories hereto attached:

To First Interrogatory, the witness answered: My name is Howard A. Dent.

To Second Interrogatory, the witness answered: Lumberman and transportation.

To Third Interrogatory, the witness answered: Yes.

To Fourth Interrogatory, the witness answered: Yes.

To Fifth Interrogatory, the witness answered: Yes.

To Sixth Interrogatory, the witness answered: Mr. Owens came to my office and asked me to look at this boat of Anderson's, which was near Ballard, that he anticipated buying with the idea of having me help him finance it. I went out in the afternoon and met Mr. Anderson on the boat, at which time we went over the boat quite thoroughly.

To Seventh Interrogatory, the witness answered: The conversation took place on the boat mentioned and as they were interested in disposing of the boat and Owens needed it for his logging business he was endeavoring to buy the boat, and in going over it he was advised that it

had just returned from Alaska and was in good shape except that they had hit a log or rock and that it might need some minor repairs there and while the engine did not run Anderson advised us that with the exception of one bearing the engine was in first class shape and that for the sum of not to exceed \$5,000.00 the boat could be put in first class condition.

/s/ HOWARD A. DENT.

Subscribed and sworn to before me this 17th day of February, 1951.

/s/ RALPH A. PHILLIPS,  
Notary Public.

My Commission expires June 23, 1951.

State of Arizona,  
County of Maricopa—ss.

I, the undersigned, under and by virtue of the Notice of taking deposition hereto attached and in accordance with Rules 30 and 31 of the Rules of Civil Procedure of the District Courts of the United States which are in effect in the Territory of Alaska, do hereby certify that Howard A. Dent, named in said Notice as a witness and whose signature is attached to the foregoing deposition, appeared before me in the County of Maricopa, State of Arizona, on the 17th day of February, 1951, and after being first duly sworn by me and put under oath according to law, made answer to each and every and all of the attached interroga-

tories as hereinabove set forth, and that said answers hereinabove set forth are the answers of said witness to said interrogatories personally reduced to writing by me and carefully read over by me to said witness, who thereupon affixed his signature thereto; that I did personally record the testimony of said witness.

That the foregoing deposition is a true record of the testimony given by the witness.

That I am an officer authorized to administer oath by and under the laws of the State of Arizona; that I am not a relative or employee or attorney or counsel for either party to the within action, and am not a relative or employee of such attorney or counsel, and am not financially interested in the within action.

That said witness subscribed his name and swore to the same before me as such Notary Public.

Given under my official signature and seal this 17th day of February, 1951.

[Seal]      /s/ RALPH A. PHILLIPS,  
Notary Public.

My Commission expires June 23, 1951.

[Admitted in evidence as Plaintiffs' Exhibit No. 22.]

[Endorsed]: Filed February 10, 1951.

[Title of District Court and Cause.]

## JOURNAL ENTRIES

Trial by Court—March 8, 1951

Now at this time cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, came on regularly for trial. Plaintiff, A. E. Owens, being present and with Robert Boochever and John E. Manders of his counsel. The Defendant, Jack C. Anderson, Sr., being present and with William W. Renfrew of his counsel. The following proceedings were had, to wit:

Opening statement to the Court was had by Robert Boochever, for and in behalf of the plaintiffs.

Opening statement to the Court was waived by William Renfrew, for and in behalf of the defendants.

Almon E. Owens, being first duly sworn, testified for and in behalf of the plaintiffs.

An agreement, dated 4/1/47, between Jack C. Anderson, Sr., Jack C. Anderson, Jr., and A. E. Owens, Fern Owens and R. F. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 1.

A check, dated 5/8/47, in the sum of \$300.00, payable to Wilson Machine Works, signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 2.

An invoice, No. 78010, by Fairbanks, Morse and Co., dated 6/17/47, to Owens Brothers, was duly offered, marked and admitted as Plaintiffs' Exhibit 3.

An invoice, No. 79975, by Fairbanks, Morse and Co., to Owens Bros., dated 7/3/47, sum of \$375.00, was duly offered, marked and admitted as Plaintiffs' Exhibit 4.

A check, dated 7/22/47, in the sum of \$6056.66, payable to Fairbanks, Morse and Co., was signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 5.

Two invoices, Nos. 76321 and 83043, by Fairbanks, Morse and Co., to Owens Brothers, in sum of \$1778.94, with itemized statement of materials attached, was duly offered, marked and admitted as Plaintiffs' Exhibit 6.

Photograph of subject vessel on ways was duly offered, marked and admitted as Plaintiffs' Exhibit 7.

Photograph of subject vessel on ways duly offered, marked and admitted as Plaintiffs' Exhibit 8.

Invoice No. 2280, to Owens Bros. Logging Co., sum of \$1,068.20, by Diesel Engineering Co., was duly offered, marked and admitted as Plaintiffs' Exhibit 9.

Invoice No. 2281, to Owens Bros. Logging Co., sum of \$153.84, by Diesel Engineering Co., was duly offered, marked and admitted as Plaintiffs' Exhibit 10.

Check dated 6/12/47, \$1,222.04, payable to Diesel

Engineering Co., by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 11.

Check dated 6/12/47, sum of \$632.42, payable to Canal Electric Co., by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 12.

Three checks, dated 7/22/47, sum of \$2,390.03; 6/3/47, sum of \$3,000.00; 7/11/47, sum of \$3,000.00, to Pacific Electrical and Mechanical Co., Inc., by A. E. Owens, with attached itemized repair material, was duly offered, marked and admitted as Plaintiffs' Exhibit 13.

Two checks, dated 7/8/47, sum of \$232.57, and 7/31/47, sum of \$222.45, both payable to H. B. Moore and signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 14.

Three checks, dated 7/8/47, sum of \$292.90; 6/5/47, sum of \$292.90; 7/31/47, sum of \$289.50, all payable to C. R. Tucker, and signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 15.

Two checks, dated 7/8/47, sum of \$219.26; 7/31/47, sum of \$245.20, both payable to W. E. Eaton, and signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 16.

Two checks, dated 7/8/47, sum of \$92.45; 7/30/47, sum of \$172.50, both payable to R. F. Jacobson, and signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 17.

Six checks, all payable to Mel Blanchard and

signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 18.

(At 11:45 o'clock a.m., Court duly continued cause until 2:00 o'clock p.m.)

Now came the respective parties, came also the respective counsel as heretofore, and the trial of cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

Almon E. Owens, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the plaintiffs.

Check, dated 3/21/48, sum of \$1,678.02, payable to Mel Blanchard, and signed by A. E. Owens, was duly offered, marked and admitted as Plaintiffs' Exhibit 19 for identification only.

Letter, dated 6/11/47, to Mr. A. E. Owens, by Jack C. Anderson, was duly offered, marked and admitted as Plaintiffs' Exhibit 20.

Two pages, dated 2/11/47, in the log book for the M/S Helena, was duly offered, marked and admitted as Plaintiffs' Exhibit 21.

An application of owner for official number, U. S. Customs form 1320, signed by A. E. Owens, was duly offered, marked and admitted as Defendants' Exhibit A.

(At 3:15 o'clock p.m., Court duly continued cause until 3:25 o'clock p.m.)



Now came the respective parties, came also the respective counsel as heretofore, and the trial of cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

Almon E. Owens, heretofore duly sworn, resumed witness stand for further cross-examination for and in behalf of the defendants.

(At 4:45 o'clock a.m., Court duly continued cause until 10:00 o'clock a.m. of Friday, March 9, 1951.)

#### Trial by Court—March 9, 1951

Now came the respective parties, came also the respective counsel as heretofore, and the trial in cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

Mel Blanchard, being first duly sworn, testified for and in behalf of the plaintiffs.

Deposition of Howard A. Dent, for and in behalf of the plaintiffs, was duly offered, marked and admitted as Plaintiffs' Exhibit 22, and said deposition remained in Court file of this cause.

(Plaintiffs rest.)

At this time William W. Renfrew, for and in behalf of the defendants, moved Court for judg-

ment for defendants on grounds of the testimony of plaintiff A. E. Owens.

Argument to the Court was had by William W. Renfrew, for and in behalf of the defendants.

Argument to the Court was had by Robert Boochever, for and in behalf of the plaintiffs.

Whereupon the Court, having heard the arguments of the respective counsel, and being fully and duly advised in the premises, reserved decision.

George H. Saindon, being first duly sworn, testified for and in behalf of the defendants.

(At 11:45 o'clock a.m., Court duly continued cause until 2:00 o'clock p.m.)

Now came the respective parties, came also the respective counsel as heretofore, and the trial in cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

George H. Saindon, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the defendants.

Almon E. Owens, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the defendants.

Gerald M. Oaksmith, being first duly sworn, testified for and in behalf of the defendants.

(At 3:30 o'clock p.m., Court duly continued cause until 3:40 o'clock p.m.)

Now came the respective parties, came also the respective counsel as heretofore, and the trial in cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

Gerald M. Oaksmith, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the defendants.

Jack C. Anderson, being first duly sworn, testified for and in behalf of the plaintiffs.

(At 5:00 o'clock p.m., Court duly continued cause until 10:00 o'clock a.m. of Saturday, March 10, 1951.)

Entered Mar. 9, 1951.

#### Trial by Court—March 10, 1951

Now came the respective parties, came also the respective counsel as heretofore, and the trial in cause No. A-5226, entitled A. E., Fern and R. F. Owens, d/b/a Owens Brothers, Plaintiffs, versus Jack C. Anderson, Sr., and Jack C. Anderson, Jr., d/b/a Anderson and Son Transportation Co., Defendants, was resumed.

Jack C. Anderson, heretofore sworn, resumed witness stand for further cross-examination for and in behalf of the plaintiffs.

Letter, dated 5/17/47, to Mr. Jack C. Anderson, Jr., by Orville H. Mills, was duly offered, marked and admitted as Defendants' Exhibit B.

Letter, 7/24/47, to Mr. Jack C. Anderson, by

Orville H. Mills, was duly offered, marked and admitted as Defendants' Exhibit C.

Jack C. Anderson, Jr., being first duly sworn, testified for and in behalf of the defendants.

Mel Blanchard, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the plaintiff.

Almon E. Owens, heretofore duly sworn, resumed witness stand for further testimony for and in behalf of the plaintiffs.

At this time, upon stipulation by and between respective counsel, it is agreed that in the event that William W. Renfrew, of counsel for defendants, desired a reporter's transcript of certain testimony, the cause was continued until the reporter can provide said transcript; and the cause was further continued for 10 days for the filing of depositions, and counsel are given 30 days thereafter for the filing of briefs.

Entered March 10, 1951.

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Scottsdale, Arizona,  
Mar. 12, 1949.

Mr. Orvill H. Mills,  
Central Bldg.,  
Seattle, Wash.

Dear Sir:

I am just in receipt of a letter from A. E. Owens, Hood Bay, Alaska, regarding the purchase of their tug from Jack Anderson.

Inasmuch as I expected to help A. E. Owens finance the boat, I went out to look it over with him, "but could not fix the date," at which time Anderson told us the boat did not leak, and the only work necessary on the engine was to smooth up one connecting rod bearing. And the hull only needed a small repair to the bow where they had hit a log on the way down. They stated that an expenditure of not to exceed \$5000.00 would put the boat in first class condition. It seems to me I remember there was a bent rudder post also, but they said the \$5000.00 would completely overhaul the boat, putting it in first class condition.

A. E. has advised me that you are familiar with the transaction, and that a deposition from me might help him in settling with them.

For this reason I am asking that you prepare a deposition and mail it to me here, where I can sign it before an Arizona Notary and air mail it to Alaska, where I hope it would reach them in time and be of assistance to them.

If you will air mail it to me I will no doubt get it in a couple of days.

Awaiting your reply, I remain,

Yours truly,

H. A. DENT,  
Route 1, Box 316,  
Scottsdale, Arizona.

[Title of District Court and Cause.]

### NOTICE

Notice Is Hereby Given, in accordance with the provisions of Rule 31 of the Rules of Civil Procedure for the District Courts of the United States, that the deposition of Howard A. Dent, now of Route 1, Box 316, Scottsdale, Arizona, will be taken as a witness for the plaintiffs in the above-entitled action, by means of written interrogatories before Ralph A. Phillips, a Notary Public in and for the State of Arizona, whose address is Phoenix National Bank Building, Phoenix, Arizona.

Attached hereto is a true and correct copy of the direct interrogatories propounded by the plaintiffs.

Dated at Juneau, Alaska, this 28th day of March, 1951.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ R. BOOCHEVER,  
Attorneys for Plaintiffs.

I do hereby certify that I mailed a true and correct copy of the foregoing notice and attached Direct Interrogatories to William W. Renfrew, attorney for the defendants, via prepaid air mail on March 29, 1951.

/s/ R. BOOCHEVER,  
Of Plaintiffs' Attorneys.

[Endorsed]: Filed April 2, 1951.

[Title of District Court and Cause.]

DIRECT INTERROGATORIES PROPOUNDED  
TO HOWARD A. DENT

1. Are you the same Howard A. Dent who has previously answered interrogatories in the above-entitled action?

2. In your previous answer to the seventh interrogatory propounded to you, you stated:

“The conversation took place on the boat mentioned and as they were interested in disposing of the boat and Owens needed it for his logging business he was endeavoring to buy the boat and in going over it he was advised that it had just returned from Alaska and was in good shape except that they had hit a log or rock and that it might need some minor repairs there and while the engine did not run Anderson advised us that with the exception of one bearing the engine was in first class shape and that for the sum of not to exceed \$5,000.00 the boat could be put in first class condition.”

Do you have any means of refreshing your memory as to just what was said by Mr. Anderson to Mr. Owens at that time in regard to the object which he stated they had hit?

3. On March 12, 1949, did you write a letter to Mr. Orville H. Mills, relating your recollection of this conversation at that time? If you have a copy of that letter which is a true and correct copy of the original letter mailed by you to Mr. Mills on

or about March 12, 1949, attach such copy to your answers to these interrogatories.

4. Do you now know what was said by Mr. Anderson in regard to the object that had been hit?

5. If your answer to the last question is in the affirmative, what was said?

6. Was anything else, other than the matters contained in your answer to the seventh interrogatory previously propounded to you, said by Mr. Anderson to Mr. Owens in regard to the condition of the vessel?

7. In the answer to the seventh interrogatory mentioned above, you stated that "the engine did not run." What did you mean by that statement?

Dated at Juneau, Alaska, this 28th day of March, 1951.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ R. BOOCHEVER,  
Attorneys for Plaintiffs.

[Title of District Court and Cause.]

ANSWERS TO DIRECT INTERROGATORIES  
PROPOUNDED TO HOWARD A. DENT

Pursuant to the stipulation dated March 28, 1951, for the taking of the deposition of Howard A. Dent in accordance with Rules 30 and 31 of the Rules of Civil Procedure for the District Courts of the



United States which are in effect in the Territory of Alaska, personally appeared before me, the undersigned Notary Public in and for the County of Maricopa, State of Arizona, Howard A. Dent, a witness for plaintiffs in the within action, who, being first duly sworn to testify the truth and nothing but the truth was examined as follows and made answers as follows to the Interrogatories hereto attached:

To First Interrogatory the witness answered: I am.

To Second Interrogatory the witness answered: Yes, I have means of refreshing my memory.

To Third Interrogatory the witness answered: I wrote such letter on March 12, 1949, to Mr. Orvill H. Mills and am attaching a copy of the letter written at that time which is a true and correct copy of the original.

To Fourth Interrogatory the witness answered: Yes. After refreshing my memory I know now what was said by Mr. Anderson in regard to the object that had been hit.

To Fifth Interrogatory the witness answered: Mr. Anderson stated that the object struck was a log.

To Sixth Interrogatory the witness answered: Yes, Mr. Anderson made a representation in regard to the engine.

To Seventh Interrogatory the witness answered: He stated that the engine had just returned

from Alaska under its own power and that outside of the connecting rod bearing which had to be smoothed up the engine was in first-class condition. In my previous deposition wherein I stated the engine did not run I merely meant that it was not operated, started up, while demonstrating it to us but, as above stated, had just come from Alaska under its own power according to Mr. Anderson.

/s/ HOWARD A. DENT.

Subscribed and sworn to before me this 10th day of May, 1951.

[Seal] /s/ RALPH A. PHILLIPS,  
Notary Public.

My commission expires June 23, 1951.

State of Arizona,  
County of Maricopa—ss.

I, the undersigned, under and by virtue of the stipulation dated March 28, 1951, for the taking of the deposition of Howard A. Dent and in accordance with Rules 30 and 31 of the Rules of Civil Procedure of the District Courts of the United States which are in effect in the Territory of Alaska, do hereby certify that Howard A. Dent, named in said stipulation as a witness and whose signature is attached to the foregoing deposition, appeared before me in the County of Maricopa, State of Arizona, on the 10th day of May, 1951, and after being first duly sworn by me and put

under oath according to law made answer to each and every and all of the attached interrogatories as hereinabove set forth and that said answers hereinabove set forth are the answers of said witness to said interrogatories personally reduced to writing by me and carefully read over by me to said witness who thereupon affixed his signature thereto; that I did personally record the testimony of said witness.

That the foregoing deposition is a true record of the testimony given by the witness.

That I am an officer authorized to administer oath by and under the laws of the State of Arizona; that I am not a relative or employee or attorney or counsel for either party to the within action and am not a relative or employee of such attorney or counsel and am not financially interested in the within action.

That said witness subscribed his name and swore to the same before me as such Notary Public.

Given under my official signature and seal this 10th day of May, 1951.

[Seal]      /s/ RALPH A. PHILLIPS,  
                                Notary Public.

My commission expires June 23, 1951.

[Endorsed]: Filed March 15, 1951.

[Title of District Court and Cause.]

### OPINION

Plaintiffs seek to recover \$34,487.97 in damages for breach of warranty as to the condition of a tug sold to the plaintiffs.

In 1946, at Seward, Alaska, the Army sold the tug involved in this controversy as surplus to the defendants, who used it in their transportation business. In February, 1947, the tug was taken to Seattle for repairs. En route she struck a rock and was anchored in a nearby harbor for the night so that the extent of the damage might be determined. After her arrival in Seattle, the defendants decided to sell the tug rather than have it repaired. At this juncture the plaintiff A. E. Owens appeared on the scene. His firm was in the market for a tug to be used in connection with its logging business in Alaska. The defendant J. C. Anderson showed him the tug and Owens made a casual inspection. Owens told Anderson that he was engaged in the logging business in Alaska and desired a tug for towing logs. Anderson replied that the tug was in fair condition with the exception that the crankshaft pin for No. 5 cylinder was scored and that the forefoot or the stem was damaged from striking a log on the trip to Seattle, but that the vessel did not leak. Anderson further told Owens that the tug could be put in first class shape for \$5,000 and offered to sell it for \$25,000 in its then condition, or for \$30,000 repaired. Owens elected to make his own repairs and agreed to buy

the tug for \$25,000. The agreement was executed on April 1st, but the agreement not only does not even refer to the condition of the tug, but its purpose apparently was to provide for immediate transfer of possession pending receipt of a bill of sale from the Army, which was a prerequisite to documentation.

From the testimony it appears that although Owens has been engaged in the logging business for many years, during the course of which he has bought and operated boats, his knowledge of vessels was limited to what would ordinarily be acquired in traveling on them to and from his logging camps, and his inspection revealed no more than what was open and visible as the tug lay in the water. One piston had been removed from the cylinder and was made fast to the motor block. This was done because of overheating due to the scored crank pin. Thereafter the engine was operated on 5 of its 6 cylinders. An inspection of the engine by the witness Engstrom, the mechanical expert of the Fairbank-Morse Company, presumably the manufacturer of the engine, disclosed that all the main bearings were ruined and the main bearing journals scored and  $\frac{1}{8}$  inch over the original shaft diameter; that the drive gear was useless because of several broken teeth; that the water pump was completely obstructed; that the salt and fresh water pump shafts were bent and the bearings ruined; that the crank shaft was warped from excessive heat and no longer useful; that the oil columns were clogged with babbitt from the

bearings and totally obstructed and that a make-shift oil line had been installed to provide lubrication. The base of the engine was also warped from excessive heat. Engstrom testified that the warping of the base of the engine and the crankshaft was caused by heat of such intensity as could be generated only by a fire ignited in the base from friction as a consequence of a total lack of lubrication.

The vessel was then placed in a dry dock, where an inspection revealed that the lower part of the stem, the entire forefoot, the forward end of the keel and the ends of the adjacent planks were almost completely splintered, that the stem plate hung by one end and that the forward watertight compartment was filled with water. It was also discovered that the tail shaft was oxidized from galvanic action or electrolysis to such an extent as to require replacement; that the battery required new plates; that the stuffing box was beyond repair and that the winches were frozen in consequence of rust and lack of lubrication.

It was proved that instead of striking a log, which would have caused relatively little damage to a tug of this size, the tug had struck a rock, and from the photographs of the bow, plaintiffs' exhibits Nos. 9 and 19, I am convinced that so much damage could not have resulted unless the vessel struck at full speed. The testimony of the defendant Anderson as to this incident was such as to seriously affect his credibility.

The plaintiffs contend that Anderson warranted

that the vessel was tight and in good condition except for a bruised forefoot and a scored crank pin. Notwithstanding that the defendants admit they reported the vessel to be tight and in fair condition except for a scored crank pin and damaged forefoot, they contend that the tug was sold "as is." Not only do the plaintiffs deny this but an examination of the defendants' testimony warrants the conclusion that this contention is an afterthought. Anderson warranted the tug to be in fair condition with the exception noted. Having done so, he could not avoid the effect thereof by replying to Owens' inquiry, a few days later, as to his best price, that the price was \$25,000 "as is." Under the circumstances, the only meaning that can be given the term "as is," assuming that it was used, is that it meant the condition already stated as fair with the exceptions referred to.

The applicable law is that of the State of Washington, *Bulkley v. Honold*, 19 Howard 390, which has enacted the Uniform Sales Act, 7 Remington Revised Statutes, Sections 5836-1, et seq., the pertinent sections of which are as follows:

Sec. 12: "Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods, relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty."

Sec. 15 (1) (3): "Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose."

(3) "If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed."

Sec. 69 (1)(a)(b), (6) & (7): (1) "Where there is a breach of warranty by the seller the buyer may at his election (a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution of extinction of the price; (b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;"

(6) "The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty."

(7) "In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty."

Since the defendant sold the tug for \$25,000 and the plaintiffs claim it cost \$27,487.97 to restore



the vessel to the condition it was warranted to be in, it would appear either that the defendants sold the tug for far less than its value or that the plaintiffs had it completely overhauled. I am inclined to believe that much of the work was unnecessary to restore the vessel to the condition it was warranted to be in, for it is incredible that the value of a tug which cost \$250,000 to build three years before had, because of a ruined motor and damaged bow, wear and tear and perhaps neglect, somehow depreciated to minus \$2,500.

I find that the tug was not sold "as is" but upon the express warranty that it was tight and in fair condition with the exceptions noted; and that this warranty was made with the intent that the plaintiffs should rely, and that plaintiffs bought the tug in reliance, thereon. I also find that although Owens examined the vessel, it was not, nor could it have been, such an "examination as ought to have revealed" (Sec. 15 (3) Uniform Sales Act), the internal defects in the motor and the under water damage to the hull.

I further find that to restore the vessel to a fair condition it was reasonably necessary to, and that the plaintiffs did, expend \$300 for turning the scored crank pin, \$6,056.66 for a new crankshaft, \$6,085.19 for labor and material in connection with the installation of the crankshaft and repair of the engine, \$8,390.03 for repairs to the bow, \$966.80 for supervision by the plaintiffs' representative Blanchard, a total of \$21,798.68, from which the \$5,000 which plaintiff expected to expend on re-

pairs in accordance with the defendants' estimate, must be deducted, leaving as the amount allowed for repairs the sum of \$16,798.68 as against \$27,487.97 expended by the plaintiffs. I am inclined to believe that from the amount allowed for repairs should be deducted the equivalent of accrued depreciation for three years, the age of the tug, but in the absence of any evidence, no finding can be made on this subject.

The plaintiffs also claim \$11,000 for loss of profit. This is based on the plaintiffs' estimate that of the total of 105 days consumed in making repairs, 75 days were consumed in restoring the tug to the condition it was warranted to be in. In view of the finding of the Court, it is obvious that the time basis should be in the same proportion to 105 days as \$16,798.68 is to \$27,487.97, or 63 days. From this must be deducted the 10 days consumed in making the trip to San Francisco to pick up a barge and towing it to Alaska, leaving 53 instead of 75 days for loss of profits, or \$7,733.33 instead of \$11,000. It should be noted that no proof of charter value for this 10-day period was submitted. I also find that the value of the lifeboat, which defendants borrowed from the plaintiffs' tug and failed to return, was \$500.

Otherwise, I find that the vessel was in fair condition as represented and, hence, conclude that the claims for a new tail shaft, stuffing box, battery plates and copper paint should be disallowed. An examination of the bills discloses that the cost of labor was quite uniformly twice the material cost.

I, therefore, find that \$240, the cost of applying the copper paint, should be deducted to make four that it was not necessary for Owens to make four trips to Seattle and that the evidence as to what his crew did in assisting in the making of repairs and what his supervisor bought in tools and supplies for use in connection therewith, is insufficient to show that the damages claimed for these items resulted from the breach and, hence, these claims are likewise disallowed.

Accordingly, I conclude that the plaintiffs are entitled to a judgment of \$24,788.01 and that \$900 should be allowed for attorney fees.

Dated at Ketchikan, Alaska, this 7th day of November, 1951.

/s/ GEORGE W. FOLTA,  
District Judge.

[Endorsed]: Filed November 14, 1951.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above-entitled action having come on for hearing before the Court without a jury on March 8, 9 and 10, 1951, and A. E. Owens of the plaintiffs having appeared in person and the plaintiffs having appeared by R. Boochever of Faulkner, Banfield & Boochever, and John E. Manders of Anchorage,

of their attorneys, and the defendants being present in person and appearing by William Renfrew, of their attorneys, and evidence having been adduced in open Court and the parties having stipulated to the taking of additional depositions and to the submission of written arguments, and the depositions of Orville H. Mills, Ted Engstrom and H. A. Dent having been submitted by the plaintiffs, and the deposition of David Elden Erickson having been submitted by the defendants, and written arguments having been filed, the Court being fully advised, makes the following

#### Findings of Fact

1. Plaintiffs and defendants were residents of the Territory of Alaska at all times mentioned herein.
2. In February, 1947, the defendants took the vessel TP 100, later known as the tug ADAK, from Alaska to Seattle for repairs.
3. En route from Alaska to Seattle the vessel forcibly struck a rock so that it was necessary for it to be backed off, and the defendants anchored in a nearby harbor to determine the extent of the damage.
4. After arriving in Seattle, the defendants decided to sell the vessel rather than have it repaired.
5. A. E. Owens, representing the plaintiffs, was shown the vessel by the defendant J. C. Anderson, and made a casual inspection of the vessel.

6. A. E. Owens informed the defendants that the plaintiffs were in the logging business in Alaska and desired to purchase a vessel for use in towing logs.

7. J. C. Anderson stated that the vessel was in fair condition with the exception that the crankshaft pin for No. 5 cylinder was scored and that the forefoot or the stem was damaged from striking a log on the trip to Seattle, but that the vessel did not leak. Anderson further stated that the vessel could be put in first class shape for \$5,000.

8. The defendants offered to sell the vessel to the plaintiffs for \$25,000 in its then condition or for \$30,000 repaired.

9. On April 1, 1947, A. E. Owens, on behalf of the plaintiffs, agreed to purchase the vessel for \$25,000 and elected to make his own repairs.

10. A written agreement was executed on April 1, 1947, but the agreement did not refer to the condition of the tug.

11. The purpose of the agreement was to provide for immediate transfer of possession of the vessel pending receipt of a bill of sale from the Army, which was a prerequisite to documentation.

12. A. E. Owens had been engaged in the logging business for many years during the course of which he had bought and operated boats.

13. A. E. Owens' knowledge of vessels was limited to what would ordinarily be acquired in traveling on them to and from his logging camps.

14. A. E. Owens' inspection of the vessel TP 100 revealed no more than what was open and visible as the tug lay in the water.

15. The only damage that this inspection revealed was that one piston had been removed from the cylinder and was made fast to the motor block.

16. After purchase of the vessel it was ascertained that all of the main bearings were ruined and the main bearing journals scored and  $\frac{1}{8}$  inch over the original shaft diameter; that the drive gear was useless because of several broken teeth; that the water pump was completely obstructed; that the salt and fresh water pump shafts were bent and the bearings ruined; that the crankshaft was warped from excessive heat and no longer useful; that the oil columns were clogged with babbitt from the bearings and totally obstructed and that a makeshift oil line had been installed to provide lubrication. The base of the engine was also warped from excessive heat.

17. After its purchase, the vessel was placed in a dry dock where an inspection revealed that the lower part of the stem, the entire forefoot, the forward end of the keel, and the ends of the adjacent planks, were almost completely splintered, that the stem plate hung by one end and that the forward watertight compartment was filled with water.

18. The damage referred to in the paragraph above was below the water line and could not be ascertained by casual inspection of the vessel before it was placed in dry dock.

19. After the purchase of the vessel, it was also discovered that the tail shaft was oxidized from galvanic action or electrolysis to such an extent as to require replacement; that the battery required new plates; that the stuffing box was beyond repair and that the winches were frozen in consequence of rust and lack of lubrication.

20. Striking a log would have caused relatively little damage to a tug of this size.

21. The examination made by A. E. Owens of the vessel was not nor could it have been such an examination as ought to have revealed the internal defects in the motor and the under-water damage to the hull.

22. Plaintiffs expended \$300.00 for turning the scored crank pin, \$6,056.66 for a new crankshaft, \$6,085.19 for labor and material in connection with the installation of the crankshaft and repair of the engine, \$8,390.03 for repairs to the bow, and \$966.80 for supervision by the plaintiffs' representative Blanchard, making a total of \$21,798.68.

23. Additional expenditures were made by the plaintiffs so that the total amount expended was \$27,487.97.

24. The sum of \$21,798.68 which was expended by the plaintiffs in the repair of the vessel, was necessary to restore the vessel to a fair condition and exceeded the \$5,000.00, which plaintiffs expected to expend on repairs in accordance with defendants' estimate, by the sum of \$16,798.68.

25. As a result of the repairs necessary to restore the vessel to fair condition, in addition to the repairs which were to have been made in accordance with the defendants' estimate, the plaintiffs were delayed in securing the use of the vessel, for a period of 64 days.

26. The plaintiffs spent ten days in making a trip to San Francisco to pick up a barge and tow it to Alaska, making a net of 54 days loss of use of the vessel.

27. The plaintiffs sustained a loss of profits in the sum of \$7,920.18, due to the delay in securing the use of the vessel over and above the time that it would have been necessary to repair the vessel had it been in the condition as represented.

28. The defendants borrowed a lifeboat from the plaintiffs and failed to return the same.

29. The value of the lifeboat so borrowed was \$500.00.

30. The cost of applying copper paint to the vessel was \$240.00, and should be deducted from the cost of placing the vessel in fair condition.

31. It was unnecessary for A. E. Owens to make four trips to Seattle in connection with the repairs of the vessel.

32. The evidence in regard to the work performed by A. E. Owens' crew, is insufficient to show that it was necessitated by the misrepresentations of the defendants.



33. The evidence in regard to the purchase by Mr. Blanchard of tools and supplies is insufficient to show that these claims resulted from breach of warranties by the defendants.

From the foregoing Finding of Fact, the Court makes the following

### Conclusions of Law

1. The defendants made express warranties in regard to the condition of the vessel TP 100.

2. The warranties made by the defendants were such as to induce the plaintiffs and did induce the plaintiffs to purchase the vessel in reliance thereon.

3. The plaintiffs purchased the vessel in reliance on the warranties made by the defendants and it was the intent of the defendants that the plaintiffs should so rely on the warranties.

4. The examination made by A. E. Owens of the vessel was not such an examination as ought to have revealed the internal defects in the motor and the underwater damage to the hull.

5. As a result of the breach of warranties in regard to the condition of the vessel, plaintiffs have been damaged in the sum of \$24,478.86.

6. As a result of the wrongful detention of the lifeboat, plaintiffs have been damaged in the sum of \$500.00.

7. Plaintiffs are entitled to judgment against the defendants in the sum of \$24,978.86, together

with plaintiffs' costs and disbursements herein, including a reasonable attorney's fee of \$900.00.

Dated at Juneau, Alaska, this 27th day of November, 1951.

/s/ GEORGE W. FOLTA,  
District Judge.

I certify that a true and correct copy of the foregoing Findings of Fact and Conclusions of Law were mailed to William Renfrew of Davis & Renfrew, Attorneys at Law, Anchorage, Alaska, this 24th day of November, 1951, by prepaid air mail.

/s/ R. BOOCHEVER,  
Of Plaintiffs' Attorneys.

[Endorsed]: Filed November 30, 1951.

In the District Court for the Territory of Alaska,  
Division Number Three, at Anchorage

No. A-5226

A. E. OWENS, FERN OWENS, and R. F.  
OWENS, Co-Partners, Doing Business as  
OWENS BROTHERS,

Plaintiffs,

vs.

JACK C. ANDERSON, SR., and JACK C. AN-  
DERSON, JR., Co-Partners, Doing Business  
as ANDERSON & SON TRANSPORTA-  
TION CO.,

Defendants.

### JUDGMENT

This matter coming on to be heard before the Court without a jury on March 8, 9, and 10, 1951, and A. E. Owens of the plaintiffs having appeared in person, and the plaintiffs having appeared by R. Boochever, of Faulkner, Banfield & Boochever, and John E. Manders of Anchorage, of their attorneys, and the defendants being present in person and appearing by William Renfrew of their attorneys, and evidence having been adduced in open Court and the parties having stipulated to the taking of additional depositions and to the submission of written arguments, and the depositions of Orville H. Mills, Ted Engstrom and H. A. Dent having been submitted by the plaintiffs, and the deposition of David Elden Erickson having been submitted by the defendants, and written arguments having been

filed, and the Court having made its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed that plaintiffs have judgment against the defendants in the sum of \$24,978.86, together with plaintiffs' costs and disbursements, including an attorneys' fee of \$900.00.

Dated at Juneau, Alaska, this 27th day of November, 1951.

/s/ GEORGE W. FOLTA,  
District Judge.

I certify that a true and correct copy of the foregoing Judgment was mailed to defendants' attorneys at Anchorage, Alaska, via prepaid air mail this 24th day of November, 1951.

/s/ R. BOOCHEVER,  
Of Plaintiffs' Attorneys.

[Endorsed]: Filed November 30, 1951.

[Title of District Court and Cause.]

Judgment having been entered in the above-entitled action on the .. day of November, 1951, against the above-named defendants, the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk.....	\$ 15.00
Fees of the marshal.....	3.10
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case.....	142.80

Fees and disbursements for printing.....	.....
Fees for witnesses (itemized on reverse side) .....	532.90
Fees for exemplification and copies of papers necessarily obtained for use in case .....	.....
Docket fees under 28 U.S.C. 1923 .....	.....
Costs incident to taking of depositions ...	122.50
Costs as shown on Mandate of Court of Appeals—Other Cost (Please itemize)..	.....
Attorneys' fees.....	900.00
Trial fee.....	6.00
	<hr/>
Total .....	\$1,722.30

United States of America,  
Territory of Alaska—ss.

I, John E. Manders, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day served on Davis & Renfrew attorneys for defendants.

/s/ JOHN E. MANDERS,  
One of the Attorneys for  
Plaintiffs.

Subscribed and sworn to before me this 1st day of December, A.D. 1951, at Anchorage, Alaska.

[Seal] /s/ WILLIAM H. OLSEN,  
Notary Public for Alaska.

My commission expires 11/1/54.

Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)

Name and Residence	Attendance		Subsistence		Mileage		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
Melvin Blanchard, Orick, Cal. ....	3	\$12.00	3	\$12.00	939	\$281.70	\$305.70
A. E. Owens, Juneau, Alaska .....	3	12.00	3	12.00	624	187.20	211.20
H. A. Dent, Scottsdale, Ariz. ....	2	8.00					8.00
Orville Mills, Seattle, Wash. ....	1	4.00					4.00
Ted Engstrom, Tacoma, Wash. ....	1	4.00	1	4.00	27	4.00	4.00
Total.....							\$532.90

[Endorsed]: Filed December 1, 1951.

[Title of District Court and Cause.]

### MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes now the above-named defendants and move that the Court may amend its Findings of Fact and Conclusions of Law or make additional Findings of Fact and Conclusions of Law, and may amend the Judgment heretofore entered in the above-entitled cause according to the evidence given at the trial of the cause to conform to evidence and the law, and to find that the plaintiffs are not entitled to Judgment against the defendants, and to find that the defendants are entitled to Judgment against the plaintiffs, and for the basis of this motion defendants refer to and by reference adopt their allegations of error made in their motion to set aside the judgment and enter Judgment in favor of defendants, and in the alternative for a new

trial, which Motion is filed concurrently with this Motion.

Dated at Anchorage, Alaska, this 6th day of December, 1951.

DAVIS & RENFREW,

By /s/ WILLIAM W. RENFREW,  
Attorneys for Defendants.

[Endorsed]: Filed December 6, 1951.

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[Title of District Court and Cause.]

**MOTION TO SET ASIDE JUDGMENT RENDERED IN FAVOR OF PLAINTIFF AND TO ENTER JUDGMENT IN FAVOR OF DEFENDANT OR IN THE ALTERNATIVE FOR A NEW TRIAL**

Comes now the defendants and move that the Judgment rendered in the above-entitled matter by the above-entitled Court on the 27th day of November, 1951, in favor of the plaintiffs and against the defendants may be vacated and set aside and that Judgment may be entered in favor of the defendants and against the plaintiffs, and in the alternative move that a new trial may be granted in the matter.

This Motion is based upon the fact that the defendants, at the close of plaintiffs' case, moved for judgment, and that said Motion being overruled, the defendants at the close of all the evidence again moved for judgment, and for the reason that the

defendants believe the Court's ruling upon such Motions were erroneous, and for the further reason that the Findings of Fact entered by the Court in this matter are not supported by any substantial evidence, and for the further reason that the Conclusions of Law adopted by the Court are not supported by the Court's Findings of Fact, and for the further reason that the judgment entered by the court in favor of the plaintiffs and against the defendants is not supported by any evidence and is contrary to law, and for the reason that certain errors of law occurred during the course of the trial to which objection was made and exception saved by the defendants in the course of the trial and which resulted in prejudice to the defendants in the decision of the matter, all as hereinafter more fully set forth:

1. That there was no substantial evidence to justify a judgment in favor of the plaintiffs and against the defendants at the close of plaintiffs' case, and that the Court at that time should have granted defendants' Motion for Judgment.

2. That the Court should have granted defendants' Motion for Judgment made at the close of the entire case.

3. That the Court erred in making its Findings of Fact in that such Findings are not supported by any evidence but are contrary to the evidence in the cause.

4. That the Court erred in adopting its Conclusions of Law for the reason that such conclusions



are not supported by the evidence and are not supported by the Findings of Fact made by the Court and are contrary to law.

5. That the Court erred in entering Judgment in favor of plaintiffs and against the defendants for the reason that such Judgment is not supported by the evidence, and is contrary to the evidence, and is contrary to law, and for the reason that such Judgment is not supported by the Conclusions of Law adopted by the Court or by the Findings of Fact upon which said Conclusions are based.

6. That the Court erred in allowing the admission of certain testimony concerning the purchase price paid by Anderson for the boat TP 100 and then failed to admit evidence concerning the sale price received by Owens for the boat after its repairs which by this suit he is charging to the defendants.

Dated at Anchorage, Alaska, this 6th day of December, 1951.

DAVIS & RENFREW,

By /s/ WILLIAM W. RENFREW,

Attorneys for Defendants.

[Endorsed]: Filed December 6, 1951.

[Title of District Court and Cause.]

EXCEPTIONS ON BEHALF OF DEFENDANTS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

Comes now the defendants above named and object to certain of the Findings of Fact and Conclusions of Law and to the Judgment entered by the Court in the above-entitled matter on the 27th day of November, 1951, and requests that defendants may be allowed their exceptions to such matters for the reason set out with each particular objection and exception as follows:

1. Defendants desire to object to certain of the Findings of Fact made by the Court in the above-entitled matter and desire to state their exceptions to such Findings as follows:

(a) The portion of the third paragraph of such Findings which reads "the vessel forcibly struck a rock" for the reason that the same is not supported by the evidence.

(b) The fourth paragraph of such Findings which reads "After arriving in Seattle, the defendants decided to sell the vessel rather than have it repaired" for the reason that there is no evidence to support such Finding that the defendants decided to sell after arriving in Seattle or that the repairs of the vessel had anything to do with their decision to sell.

(c) That portion of the fifth paragraph of such

Findings which reads as follows "and made a casual inspection of the vessel" for the reason that from the evidence in this cause it appears that Owens was afforded opportunity to make a thorough inspection of the vessel.

(d) That portion of the seventh paragraph of the Findings of Fact which is to the effect that J. C. Anderson stated the "stem was damaged from striking a log" and that "the vessel could be put in first class shape for \$5,000.00," for the reason that the evidence does not show that Anderson made such statements.

(e) The portion of the eighth paragraph of the Findings of Fact which recite for "\$30,000.00 repaired" for the reason that the evidence shows that J. C. Anderson agreed to sell the vessel for \$25,000.00 as is or \$30,000.00 and make certain repairs.

(f) The thirteenth paragraph of such Findings which reads "A. E. Owens' knowledge of vessels was limited to what would ordinarily be acquired in traveling on them to and from his logging camps" for the reason that from the undisputed evidence Owens had previously purchased, operated and sold boats in connection with his logging operations.

(g) The fourteenth finding for the reason that the undisputed evidence shows in this cause that A. E. Owens had sufficient opportunity, unrestricted by the defendants, to inspect said vessel.

(h) The fifteenth finding for the reason that the undisputed evidence shows in this cause that A. E. Owens had sufficient opportunity, unrestricted by the defendants, to inspect said vessel, and that the

inspection made by Owens was sufficient to put him on notice that the engine was not in first class condition.

(i) The sixteenth finding for the reason that the same is not supported by the evidence.

(j) The seventeenth finding for the reason that the same is not supported by the evidence.

(k) The eighteenth finding for the reason that the same is not supported by the evidence in that defendants had ample opportunity to make a thorough inspection.

(l) The nineteenth finding for the reason that the same is not supported by the evidence.

(m) The twentieth finding for the reason that the same is not supported by the evidence.

(n) The twenty-first finding for the reason that the undisputed evidence in this cause shows that A. E. Owens had sufficient opportunity, unrestricted by the defendants, to inspect said vessel.

(o) That portion of the twenty-second finding which reads as follows: "an \$966.80 for supervision by the plaintiffs' representative, Blanchard," for the reason that the same is not supported by the evidence.

(p) That portion of the twenty-fourth finding which reads in part "was necessary to restore the vessel to a fair condition" for the reason that the same is not supported by the evidence and, for the further reason that such finding does not tend to substantiate any claim in the plaintiffs and against the defendants in light of the representations made

and the circumstances under which the vessel was purchased.

(q) The twenty-fifth finding for the reason that the same is not supported by the evidence.

(r) That portion of the twenty-sixth finding which reads "making a net of 54 days loss of use of the vessel" for the reason that the same is not supported by the evidence.

(s) That portion of the twenty-seventh finding which reads "the plaintiffs sustained a loss of profits in the sum of \$7,919.64" for the reason that the same is not supported by evidence other than the statement of the plaintiff, A. E. Owens.

(t) The twenty-eighth finding for the reason that the same is not supported by the evidence.

(u) The twenty-ninth finding for the reason that the same is not supported by the evidence.

(v) Paragraph one of the conclusions of law for the reason that there is no evidence upon which to base such a conclusion and that such conclusion is not supported by the findings of fact made by the Court and that such Conclusion, if correct, is not sufficient to justify a judgment in favor of the plaintiffs and against the defendants.

(w) Paragraph two of the conclusions of law for the reason that by the undisputed evidence the vessel was sold "as is" and that such Conclusion is not supported by the findings of fact made by the Court and that such Conclusion, if correct, is not sufficient to justify a judgment in favor of the plaintiffs and against the defendants.

(x) Paragraph three of the conclusions of law

for the reason that by the undisputed evidence the vessel was sold "as is," and that such conclusion is not supported by the findings of fact made by the Court and that such conclusion, if correct, is not sufficient to justify a judgment in favor of the plaintiffs and against the defendants.

(y) Paragraph four of the conclusions of law for the reason that the undisputed evidence shows that A. E. Owens had ample opportunity to make a thorough inspection, and for the further reason that under the circumstances of the sale of the vessel made as disclosed by the evidence, the vessel was sold as is and no representations or warranties were made except that the vessel was in a fair condition, and that as disclosed by the evidence, the vessel was in a fair condition at the time of sale.

(z) Paragraph five of the conclusions of law for the reason that the same are not supported by the evidence and for the further reason that the evidence discloses that the plaintiffs purchased the vessel as is knowing that the vessel would require certain repairs rather than purchasing the vessel for \$30,000.00; after repairs made by the defendants.

(aa) Paragraph six of the conclusions of law for the reason that the same is not supported by the evidence.

(bb) Paragraph seven of the conclusions of law for the reason that the same is not supported by the evidence and for the further reason that there is no evidence to support the conclusion therein contained; in that, there is no evidence that the sums

expended by the plaintiffs or any material portion thereof were required to place the vessel in a fair condition as represented by the defendants, and for the reason that there is evidence that the plaintiffs would not have lost as much use of the vessel as they did to place the vessel in first class condition, irrespective of any warranties or representations made by the defendants.

(2) Defendants wish to object to and to except to the judgment in favor of the plaintiffs and against the defendants as a whole, and in the alternative desire to object to the amount of the judgment.

(3) That as defendants believe, and so allege the fact to be, each and all of the objections and exceptions hereinabove mentioned are substantial and such findings and conclusions and judgment are inconsistent with substantial justice between the parties.

Dated at Anchorage, Alaska, this 6th day of December, 1951.

DAVIS & RENFREW,

By /s/ WILLIAM W. RENFREW,  
Attorneys for Defendants.

[Endorsed]: Filed December 6, 1951.

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[Title of District Court and Cause.]

MINUTE ENTRY

There appeared Robert Boochever of attorneys for plaintiffs, who advised the Court that he had served notice on counsel for defendants on January

4, 1952, that he would call up defendants' several motions against the Findings, Conclusions and Judgment, at this time. In view of the fact that defendants had submitted the motions without argument, the court at this time denied the same.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the above-named defendants hereby appeal to the Court of Appeals of the United States of America for the Ninth Circuit from that certain Judgment entered in the above-entitled cause by the above-entitled Court on the 27th day of November, 1951, in favor of the plaintiffs and against the defendants in the amount of twenty-four thousand nine hundred seventy-eight and 32/100 dollars (\$24,978.32), together with costs and attorneys' fees as will more fully appear from such judgment.

Dated at Anchorage, Alaska, this 27th day of December, 1951.

DAVIS & RENFREW,

By /s/ EDWARD V. DAVIS,  
Attorneys for Appellants, Jack C. Anderson, Sr.,  
and Jack C. Anderson, Jr., Co-Partners.

Receipt of copy acknowledged.

[Endorsed]: Filed December 27, 1951.



[Title of District Court and Cause.]

NOTICE OF HEARING OF  
DEFENDANTS' MOTIONS

Notice Is Hereby Given that the plaintiffs will call up for hearing before the above-entitled court at Juneau, Alaska, at 10:00 a.m., on January 14, 1952, or as soon thereafter as the same may be heard by the court, the defendants' motions to amend Findings of Fact and Conclusions of Law, to set aside Judgment rendered in favor of plaintiff, and to enter Judgment in favor of defendant or, in the alternative, for a new trial, and defendants' exceptions to Findings of Fact and Conclusions of Law and Judgment.

Dated at Juneau, Alaska, this 4th day of January, 1952.

FAULKNER, BANFIELD &  
BOOCHEVER,

By /s/ R. BOOCHEVER,  
Attorneys for Plaintiffs.

I Hereby Certify that a true and correct copy of the foregoing notice was mailed to Davis and Renfrew, Attorneys at Law, P.O. Box 477, Anchorage, Alaska, this 4th day of January, 1952.

/s/ R. BOOCHEVER,  
Of Plaintiffs' Attorneys.

[Endorsed]: Filed January 5, 1952.

[Title of District Court and Cause.]

ORDER DENYING DEFENDANTS' MOTIONS  
TO AMEND FINDINGS OF FACT AND  
CONCLUSIONS OF LAW, TO SET ASIDE  
JUDGMENT, TO ENTER JUDGMENT IN  
FAVOR OF DEFENDANTS OR, IN THE  
ALTERNATIVE, FOR A NEW TRIAL, AND  
DEFENDANTS' EXCEPTIONS TO FIND-  
INGS OF FACT AND CONCLUSIONS OF  
LAW AND JUDGMENT

This matter coming before the Court upon the motion of the defendants to amend findings of fact and conclusions of law, to set aside judgment rendered in favor of plaintiffs and to enter judgment in favor of defendants or, in the alternative, for a new trial, and exceptions on behalf of defendants to findings of fact and conclusions of law and judgment, and the attorneys for the parties having stipulated that the foregoing motions and exceptions be decided without argument,

It Is Hereby Ordered that the foregoing motions and exceptions of the defendants be and the same are hereby denied and overruled.

Dated at Juneau, Alaska, this 11th day of January, 1952.

/s/ GEORGE W. FOLTA,  
District Judge.

[Endorsed]: Filed and entered January 21, 1952.

Entered January 21, 1952.

[Title of District Court and Cause.]

### AFFIDAVIT OF SERVICE

United States of America,  
Territory of Alaska—ss.

Mary E. Renfrew, being first duly sworn, upon oath deposes and says:

That on the 6th day of February, 1952, I served copies of Notice of Appeal on John E. Manders, one of the attorneys for plaintiffs, by leaving said copies at the office of the said John E. Manders, in the Loussac Sogn Building at Anchorage, Alaska.

/s/ MARY E. RENFREW.

Subscribed and sworn to before me this 6th day of February, 1952.

[Seal] /s/ RETA OSBORN,  
Notary Public for Alaska.

My Commission Expires 7-25-55.

[Endorsed]: Filed February 6, 1952.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Jack C. Anderson, Sr., and Jack C. Anderson, Jr., co-partners doing business as Anderson & Son Transportation Co., the above-named defendants, hereby appeal to the

Court of Appeals of the United States of America for the Ninth Circuit from that certain final judgment entered in the above-entitled cause by the above-entitled Court on the 27th day of November, 1951, in favor of the plaintiffs and against the defendants in the amount of twenty-four thousand nine hundred seventy-eight and 32/100 dollars (\$24,978.32), together with interest, costs and attorneys' fees, as incorporated in the Judgment by subsequent order of the Court. As will appear from the records and files of this cause, defendants filed their Motion to Amend the Findings of Fact and Conclusions of Law and Judgment and their Motion to Set Aside the Judgment and to Render Judgment in favor of the defendants, and in the alternative their Motion for a New Trial in the manner provided by law and the Federal Rules of Civil Procedure and according to the process of the above-entitled Court. That such Motions were filed, and served, and entered by the Court, on the 6th day of December, 1951, and within the time allowed by Court rules for filing and service and entry of such Motions. That likewise as will appear from the records and files of the above-entitled Court, defendants-appellants filed Notice of Appeal from such Judgment on the 27th day of December, 1951, and that at that time defendants-appellants deposited with such Court the sum of two hundred fifty dollars (\$250.00), in lawful money of the United States of America in lieu of a cost bond. That defendants-appellants desire that the sum of

two hundred fifty dollars (\$250.00), deposited in lieu of a cost bond with the former Notice of Appeal may be considered as having been deposited with this Notice of Appeal. That thereafter and on or about the 11th day of January, 1952, the Honorable George W. Folta, Judge of the above-entitled Court, entered a Minute Order overruling each and all of the Motions made by the defendants-appellants directed to the Judgment above described, and that the Order overruling defendants' said Motions was entered by the above-entitled Court on the 21st day of January, 1952.

Dated at Anchorage, Alaska, this 6th day of February, 1952.

DAVIS & RENFREW,

By /s/ EDWARD V. DAVIS,

Attorneys for

Defendants-Appellants.

[Endorsed]: Filed February 6, 1952.

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[Title of District Court and Cause.]

### MOTION

Comes now Davis & Renfrew, attorneys for the defendants-appellants, and moves the Court for an Order granting an additional ten days within which to perfect their appeal taken in the above-entitled action.

Dated at Anchorage, Alaska, this 7th day of March, 1952.

DAVIS & RENFREW,

By /s/ EDWARD V. DAVIS,

Attorneys for

Defendants-Appellants.

Service of copy acknowledged.

[Endorsed]: Filed March 10, 1952.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR  
FILING APPEAL

Upon reading and filing the Motion of Davis & Renfrew, attorneys for defendants-appellants, requesting additional time within which to file and docket the record of the above-entitled cause with the Court of Appeals, and the Court being fully advised in the premises, it is

Hereby Ordered that defendant-appellants shall have to, and including, the 27th day of March, 1952, to file and docket the record of the above-entitled cause with the Court of Appeals.

Dated at Anchorage, Alaska, this 10th day of March, 1952.

/s/ GEORGE W. FOLTA,

District Judge.

[Endorsed]: Filed and entered March 10, 1952.

Entered March 10, 1952.

In the District Court for the Territory of Alaska,  
Division Number Three, at Anchorage

No. A-5226

A. E. OWENS, FERN OWENS, and R. F.  
OWENS, Co-Partners, Doing Business as  
OWENS BROTHERS,

Plaintiffs,

vs.

JACK C. ANDERSON, SR., and JACK C. AN-  
DERSON, JR., Co-Partners, Doing Business  
as ANDERSON & SON TRANSPORTATION  
CO.,

Defendants.

#### REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered, that on the 8th day of March, 1951, at 10:30 o'clock a.m., at Anchorage, Alaska, the above-entitled cause came on for trial without a jury; the Honorable George W. Folta, United States District Judge, presiding; the plaintiff A. E. Owens appearing in person and by Robert Boochever and John E. Manders, of his attorneys; the defendants appearing in person and by William W. Renfrew, of his attorneys;

Whereupon, the following occurred:

The Court: Do counsel feel that they would like to outline the case any more than it is in the pleadings?

Mr. Boochever: Possibly, your Honor, a brief statement might be in order.

The Court: Very well.

Mr. Boochever: This case arose out of a purchase [1\*] of a vessel, TP 100, which is now known as the Adak, and in March, 1947, Mr. A. E. Owens, one of the partners of Owens Brothers, was in Seattle and was interested in purchasing a boat, a tugboat, for use in his logging operation. The defendants, Mr. Anderson, Senior and Junior, had a TP 100 tug, and through Mr. Morgan, who was also in Seattle, Mr. Owens contacted Mr. Anderson and went aboard the vessel, and Mr. Anderson showed Owens the vessel, and they represented that the vessel was in good condition, good seaworthy condition, and they knew that the Owenses wanted a vessel for their logging operation and they were informed to that effect and they stated that the only difficulty with the engine was that one crank-pin was scored and would have to be turned and that the forefoot had been slightly bruised when they hit a log on the way down and that the vessel wasn't leaking and that otherwise it was in good condition and that a total cost of five thousand dollars would put it in first-class shape. Too, they offered to sell the vessel for twenty-five thousand dollars, or in the alternative they would repair the vessel for thirty thousand dollars, and subsequently Mr. Owens agreed to purchase the vessel for twenty-five thousand dollars, five thousand to be paid down and the balance on a mortgage to the, I believe, the First National Bank, to a bank in Anchorage anyway, and at the time Mr. Owens had never had a mechanic or anyone else go over the

**\* Page numbering appearing at foot of page of original Reporter's Transcript of Record.**



engine. He had never had the vessel taken out of the water. [2] The boat was in murky water so that you could not see below the water line, and he had relied entirely on the representations made by Mr. Anderson. Now, we believe that the evidence will show conclusively that these representations were made falsely and that the vessel, instead of having one crankpin bearing that was bad, had the whole crankshaft badly twisted and warped. The oil couplings were filled with melted babbitt. The tail shaft was found to be badly pitted and had to be replaced in order to have the vessel insured. Then subsequently the vessel was taken out of the water, and it was discovered that the whole front end was practically demolished. The forefoot was completely destroyed. The stem was badly damaged. The metal stem plate was banged off almost completely, and the boat was taking water. The only thing that kept it from showing was the forward watertight compartment that kept it from getting into the rest of the boat where it could be seen, and it was leaking badly at the time that it was sold and represented as being in a seaworthy condition, and, as a result of these misrepresentations, it became necessary for the Owens Brothers to repair the vessel at a cost in excess of twenty-six thousand dollars rather than the five thousand dollars alleged. In addition to that an additional nine hundred and thirty-four dollars was spent by Mr. Owens in traveling to and from the vessel in order to supervise the

repairs which would not have been necessary if the vessel was as represented. [3]

And, moreover, before all these damages were discovered Mr. Anderson came around and requested that he borrow a lifeboat which was on the vessel and which he needed. He needed another lifeboat to get clear through the Coast Guard to take his own boat back to Alaska, and he agreed to return that lifeboat at the Owens Brothers camp near Ketchikan, Alaska. He took the lifeboat and he has never returned it to this day, and that lifeboat has a reasonable value of one thousand dollars. Also as a result of misrepresentations, we will show that the boat was laid up for a period of approximately one hundred and five days and that about seventy-five days of that time, at least that much of that time, was due to the misrepresentations. In other words, if the boat had been as it was represented, it could have been fixed in probably a week or two and at a maximum of thirty days time, and that, if the Owens Brothers had had the use of the vessel during that time, they would have been able to have netted approximately eleven thousand dollars. So that all of those items will be shown by the plaintiff in this case, and we feel that judgment at the end of the case should be entered in the amount requested in the complaint.

Mr. Renfrew: We waive, your Honor.

The Court: Call your first witness. [4]

Plaintiffs' Case

ALMON E. OWENS

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Boochever:

Q. What is your name, please?

A. My name is Almon E. Owens.

Q. Are you a partner in the firm known as Owens Brothers?

A. I am.

Q. Who are the other partners?

A. My wife Gertrude Fern, and my brother Roland F.

Q. And were you engaged in partnership business in the year 1947?

A. I was.

Q. And what was your business at that time?

A. We were logging.

Q. And in 1947 did you meet the defendants in this case, Mr. Anderson, Jack Anderson, Senior, and Junior?

A. I did. At that time I was in Seattle and I was looking for a tugboat. I was down at the dock there in Ballard with Mr. Tom Morgan. He was loading his boat to come north, and this tug, the TP 100, was laying there at the dock at that time. He told me it was for sale and took me and introduced me to Mr. Anderson, and then Mr. Anderson and his son both took me through the boat and specified at that time that the only thing that was the matter with [5] the boat was one

(Testimony of Almon E. Owens.)

crankpin to be turned and that the forefoot of the boat had been bruised in striking a log on the way down to Seattle.

Q. Did he make any other representations to you about the boat at that time?

A. He represented it was in first-class condition with those exceptions.

Q. Did he state anything about whether the boat was leaking or not?

A. He stated it wasn't leaking, that the boat was tight. There was no evidence in the back part of the boat that it was taking any water.

Q. Was there any discussion of terms?

A. At that particular moment I think not. He stated their price for the boat was twenty-five thousand if we took it as it was there, or that they would put it in first-class condition for thirty thousand dollars.

Q. And did he say anything about how much it would cost to put it in first-class condition?

A. He said that it wouldn't exceed five thousand dollars to put it in first-class condition.

Q. Now, did you see Mr. Anderson again?

A. I saw him several different times. I think the next time I saw him I took Mr. Howard Dent down there to look over the boat with the idea of financing it for me, and he made [6] the same representations to Mr. Dent and myself that he had before.

Q. Did Mr. Dent subsequently finance the boat for you?      A. He did not.

(Testimony of Almon E. Owens.)

Q. He has no interest in the boat?

A. No, sir.

Q. Did you eventually make any agreement in regard to the purchase of this boat?

A. Later on we did. We made an agreement to purchase the boat for twenty-five thousand dollars; five thousand dollars cash, and two thousand dollars a month until the balance was paid off.

Q. Was that agreement reduced to writing?

A. It was.

Q. I show you what purports to be an agreement and ask you if you can identify this instrument?

A. That is a copy of the agreement.

Mr. Renfrew: Your Honor, I have no objection to the agreement. However, there is a purported assignment of some nature on the reverse thereof which obviously is not a copy as the same was originally prepared. I haven't had time to read it to determine what the difference is, but there seems to be considerable difference. I would like to inquire of the witness first if he knows anything about that.

The Court: You may do so. [7]

Mr. Renfrew: Mr. Owen, I will ask you if you know how the third page of that happened to be prepared?

A. At that time there was, I believe that Mr. Anderson had, a mortgage on the boat and it had to be turned over to the First National Bank, or

(Testimony of Almon E. Owens.)

this bank here, to handle, and our payments were made to the bank.

Mr. Renfrew: But at the time that the agreement was prepared it was prepared in the office of your attorneys, Chadwick, Chadwick & Mills in Seattle, was it not?

A. Correct.

Mr. Renfrew: And that third page, which is attached thereto, was not prepared by Chadwick, Chadwick & Mills; isn't that correct? Examine the entire document, sir.

A. I couldn't tell you that.

Mr. Renfrew: Well, I will hand you this. This is a carbon copy of the agreement that you are offering in evidence, of the first two pages, and the third page likewise is prepared by Chadwick, Chadwick & Mills on their stationery. But I notice that the third page on the document you are offering in evidence is an original and obviously prepared on another typewriter at some other time.

A. I think that is just additional to the agreement; it is acceptance of this by the bank, as I understand it.

Mr. Renfrew: Am I to understand that when you received that back from the bank that they had changed the terms [8] of their acceptance?

A. I think there was no special change in the terms, no; but the bank, I think, had to accept the agreement.

Mr. Renfrew: Will you kindly examine the document which I have handed you there? Look at the

(Testimony of Almon E. Owens.)

first page and the second page, are identical carbon copies of the agreement you are offering in evidence; is that correct as near as you can see?

A. I believe so.

Mr. Renfrew: Now, look at the third page. Examine the third page, please, of the document I handed you. Now, that was also prepared by Chadwick, Chadwick & Mills, was it not?

A. That is correct, but it is not signed.

Mr. Renfrew: No, it is not signed. Now, I ask you if you have any explanation to offer as to how you come into possession of one that obviously was prepared at a different time by someone else?

A. I think it was prepared by the bank themselves. That is my impression of it.

Mr. Renfrew: Without examining the third page of the document, your Honor, I don't even know that it has any material effect, but I object to the introduction of that as not being a part of the original agreement.

Mr. Boochever: I have no objection to withdrawing [9] the third page. It is the acceptance of the bank of the contract, and I don't think it has any bearing on the case at all, so I will withdraw that, and with that exception I will request that this be introduced as Plaintiffs' Exhibit 1.

Mr. Renfrew: No objection.

The Court: It may be admitted and marked Plaintiffs' Exhibit 1.

(Testimony of Almon E. Owens.)

PLAINTIFFS' EXHIBIT No. 1

Agreement

This Agreement made and entered into this 1st day of April, 1947, at the City of Seattle, Washington, by and between Jack C. Anderson, Senior, and Jack C. Anderson, Junior, co-partners, doing business as Anderson & Son Transportation Company, as First Parties, and A. E. Owens, Fern Owens and R. F. Owens, co-partners, doing business as Owens Brothers, Second Parties,

Witnesseth:

That Whereas, First Parties have purchased from the War Surplus Agency, Fort Richardson, Anchorage, Alaska, one TP 100 Army Tug and passenger boat for which first parties presently hold delivery certificate and which boat is presently located at the A. R. B. Packing Company dock, Lake Union, Seattle, Washington, and

Whereas, First Parties are desirous of selling and Second Parties are desirous of purchasing said boat, and

Whereas, First Parties have not yet received their bill of sale covering said boat nor has said boat been documented as required by law, and

Whereas, the First National Bank of Anchorage, Alaska, presently holds a mortgage, covering said boat and other equipment, made and executed by the First Parties as security for the payment of



(Testimony of Almon E. Owens.)

Plaintiffs' Exhibit No. 1—(Continued)

Thirty Thousand Dollars (\$30,000.00) and interest, and

Whereas, the parties hereto are desirous of reaching an understanding as to the sale and purchase of said boat to be effective as soon as the First Parties are able to procure a bill of sale for said boat and the proper documenting thereof,

Now, Therefore, It Is Agreed as follows:

(1) That the First Parties agree to sell and Second Parties agree to purchase said TP 100 Army tug and passenger boat, being 96 feet 6 inches in length with a tonnage of approximately 250, as presently equipped and where presently located, at a purchase price of Twenty-five Thousand Dollars (\$25,000.00).

(2) It is understood and agreed that the sale of said boat shall be effected at the earliest possible date and as soon as the First Parties have procured a due and legal bill of sale covering said boat and the documentation thereof, unless it is possible that the documentation may be procured through the Second Parties in which event the sale shall be effected as soon as the bill of sale has been procured by the First Parties.

(3) The agreed purchase price shall be Twenty-five Thousand Dollars (\$25,000.00), of which purchase price the sum of Five Thousand Dollars (\$5,000.00) shall be paid in cash upon the closing

(Testimony of Almon E. Owens.)

Plaintiffs' Exhibit No. 1—(Continued)

of said sale, and a bill of sale shall thereupon be given by the First Parties to the Second Parties, and the Second Parties shall thereupon execute and deliver unto the First Parties a promissory note for the balance of the purchase price in the sum of Twenty Thousand Dollars (\$20,000.00), dated as of the date of closing said sale and bearing interest thereafter at the rate of eight per cent (8%) per annum and payable at the rate of Two Thousand Dollars (\$2,000.00) a month plus interest on the unpaid balance at the rate of eight per cent (8%) per annum, with the first monthly payment falling due thirty days (30) after the date of consummation of said sale and further payments falling due upon the corresponding date of each and every month thereafter until the full amount of principal and interest shall have been paid; said promissory note to be further secured by a mortgage executed in due and legal form by the Second Parties to the First Parties as mortgagee.

(4) It is further agreed that the Second Parties shall procure the endorsement of said promissory note by Thomas A. Morgan of Juneau, Alaska, before delivery to the First Parties and that the First Parties will thereupon cause said promissory note to be endorsed and negotiated and said mortgage assigned to the First National Bank of Anchorage, Alaska, and will procure from the First National Bank of Anchorage, Alaska, in consider-

(Testimony of Almon E. Owens.)

Plaintiffs' Exhibit No. 1—(Continued)

ation of such negotiation of said note and assignment of said mortgage the release by First National Bank of Anchorage, Alaska, of the said boat from the said mortgage heretofore given by First Parties to the First National Bank of Anchorage, Alaska.

(5) It is further agreed that the Second Parties will upon the consummation of the sale of said boat procure and carry insurance covering said boat to the full limit of the balance owing on said promissory note and mortgage to the satisfaction of the First Parties and the First National Bank of Anchorage, Alaska, and maintain such insurance with the First Parties or the First National Bank of Anchorage, Alaska, as insured, as their interest may appear until the balance on said note and mortgage has been fully paid.

(6) It is further agreed that provisional delivery of said boat shall be given to the Second Parties this date, and that the Second Parties shall be responsible for said boat to the extent of the agreed purchase price after this date.

(7) It is further agreed that the Second Parties shall upon the execution of this agreement lodge with Chadwick, Chadwick & Mills of Seattle, Washington, the sum of Five Thousand Dollars (\$5,000.00) for payment and delivery to First Parties upon the consummation of the sale by the procuring of a bill of sale by the First Parties and documentation of the boat as required and the

(Testimony of Almon E. Owens.)

Plaintiffs' Exhibit No. 1—(Continued)

execution by First Parties to Second Parties of a proper bill of sale covering said boat.

(8) It is further agreed that all payments on said boat and upon the promissory note and mortgage to be given on the purchase of said boat shall be made to the First Parties through the First National Bank of Anchorage, Alaska, for application upon the account of the First Parties as owing to said bank.

In Witness Whereof, the parties hereto have affixed their signatures the day and year hereinabove first written.

ANDERSON & SON TRANS-  
PORTATION COMPANY,

By /s/ JACK C. ANDERSON, SR.,

By /s/ JACK C. ANDERSON, JR.

OWENS BROTHERS,

By /s/ A. E. OWENS.

Admitted in evidence March 8, 1951.

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Mr. Boochever: Your Honor, at this time I would like to interpose a request which I intended to make before we commenced with the actual trial and I didn't get around to it. Mr. Mills, who was the attorney who represented Mr. Owens and han-

(Testimony of Almon E. Owens.)

dled the affairs at the beginning of this matter, was going to be a witness at this trial, but he found he had to attend a trial before the court in Seattle at this exact time or just about, and I would like to have a continuance at the end of the trial in order to secure a deposition from Mr. Mills before the case is decided. Until two days ago he thought he was coming.

The Court: Any objection?

Mr. Renfrew: No objection, your Honor, provided we have the same consideration. We have a witness, Mr. A. W. Dawe, who was due to be here, your Honor, and I received a telegram dated March 6th that "Dawe, due to flu, will be unable to attend trial." Apparently he is ill, and with the same consideration so I can get Mr. Dawe's deposition, I won't [10] object.

The Court: Do you mean if it turns out to be necessary, or do you anticipate now that you will want to have it in any event?

Mr. Renfrew: That, your Honor, will depend on whether or not it is necessary.

The Court: Well, of course the same right is accorded both parties.

Mr. Renfrew: Thank you, your Honor.

Q. (By Mr. Boochever): Mr. Owens, we introduced this agreement which was entered into. After that agreement what took place in regard to the boat?

A. Anderson and his son moved the boat for me

(Testimony of Almon E. Owens.)

from where it was moored in Ballard up to the Stikine Fish Company Dock in Lake Union.

Q. Did they start the engine and drive it over?

A. Yes; they started the engine and took it up there.

Q. Now, up to this time had you been able to look below the surface of the water at the vessel at all?

A. Not at all. The water in Lake Union is so dark that it is almost impossible to see anything.

Q. And had you looked at the engine or torn it down or looked inside of it or anything of that nature?

A. I had just looked into this one bearing that they reported [11] needed to be smoothed up.

Q. And did you rely on anything in making this purchase of the vessel?

A. I relied on their representations entirely.

Q. And that was the basis that you purchased the vessel?           A. Correct.

Q. And you say you moved the vessel then, or the Andersons moved it for you, and where was it then tied up?

A. Stikine Fish Company Dock in Lake Union.

Q. What did you then do with the vessel?

A. Then we immediately proceeded to get a man to come down there and turn that bearing for us.

Q. And whom did you get?

A. The Wilson Motor Company, I believe, is the party.

Q. And did he proceed to turn the bearing?

(Testimony of Almon E. Owens.)

A. That is correct. He turned the bearing and made a good job of it.

Q. And did that fix the engine up then?

A. Far from it.

The Court: Well, what kind of bearing was this?

A. Connecting rod bearing on the crankshaft, your Honor.

Q. And when that was done, what did you then have done?

The Court: Well, wait a minute. Maybe my knowledge is deficient, but it seems to me there wouldn't be any connecting rod bearing on the crankshaft. There are bearings for the [12] crankshaft, and, I suppose, bearings for the connecting rod, but, when you say "connecting rod bearing on the crankshaft," that is something new to me.

A. The crankshaft; as you call it, a bearing; that is what I would call it.

The Court: Well, do you mean it is a part of the connecting rod?

A. No. Part of the crankshaft; the crankshaft itself.

The Court: But you said it was a bearing; it was a connecting rod bearing on the crankshaft.

A. Perhaps I misspoke.

The Court: Then it was a crankshaft bearing, or was there more than one bearing?

A. In this particular case there was just the one bearing that showed any fault. It was the crankshaft itself where the bearing connects to it.

(Testimony of Almon E. Owens.)

The Court: Well, now is this something in addition to the pin that you mentioned?

A. Call it the crankpin; they call it crankpin lots of times on the crankshaft. It is the same bearing that I am referring to all the time.

The Court: Well, there has been something said about a pin. Now, is that something else?

A. Lots of times you speak of it as a crankpin.

The Court: You mean you speak of a crankshank [13] bearing as a pin?

A. It is the crankshaft itself, you understand, where the connecting rod fastens on.

Mr. Renfrew: I am unable to hear the witness, your Honor. I hate to interrupt. Will you speak a little louder, please?

A. I say that where the connecting rod fastens on to the crankshaft is often referred to as the crankpin or the crank connecting rod bearing. What I am referring to is a part of the crankshaft itself. In speaking of it, it is often spoken of as the crankpin or the connecting rod bearing.

The Court: Well, am I to understand that you use the word "pin" synonymously with crankshaft?

A. Not as crankshaft, but as the connecting rod bearing. I believe that is correct.

Mr. Renfrew: Your Honor, I am sorry, but I have been unable to hear the witness. Could he use the microphone?

The Court: Will you speak loud enough so that everybody can hear and, if you have difficulty



(Testimony of Almon E. Owens.)

speaking loud enough, you will have to use the microphone. Well, I think that what the witness has in mind then is a connecting rod pin. Now, that raises another question. According to the complaint here, as I understand it, this pin was scarred.

Mr. Boochever: Your Honor, I don't know my engines [14] too well, but it is not a connecting rod pin. As I understand it, this is a part of the crankshaft. It is either the crankshaft pin or crankshaft bearing. It is called both names, as I understand it.

The Court: Well, there isn't anything that would be wider in difference than a pin and a bearing. That is what puzzles me. The two are wholly different things. A bearing is something that is hollow for the crankshaft to fit in if it is for the crankshaft. The pin is something like a——

Mr. Boochever: In other words, your Honor, the bearing fits over the pin; is that correct?

The Court: There is a pin, you can call it such, or pins, by which the lower half of the connecting rod bearing is fastened to the upper half. I don't know whether that is what he means or not.

Q. Well, Mr. Owens, can you describe a little more in detail just what this pin or bearing was that you understood had to be repaired?

A. Well, it is the crankpin on the crankshaft itself.

The Court: Well, what does it look like?

A. You know how a crankshaft is built?

The Court: Yes.

(Testimony of Almon E. Owens.)

A. It is a large place on the shaft where your bearing fastens on from the crankshaft. I believe it was No. 3 bearing; I am not sure; No. 3 pin that was bad. [15]

The Court: Well, what was the matter with it?

A. The bearing had burned out and it had been allowed to run and had scored the shaft.

The Court: Well, what effect would that have on the pin?

A. It was scored, your Honor.

The Court: You mean the pin was scored?

A. Scored; that is correct.

The Court: As well as the bearing?

A. The bearing was burned out entirely, the bearing itself; but the pin itself was badly scored, and it was a matter of smoothing out this pin.

The Court: Well, but the pin doesn't serve the purpose of a bearing. It just holds something together, doesn't it?

A. Correct. But it is often spoken of as the crankpin on the crankshaft itself. There are lots of crankshafts where there is a single engine that only have one pin, but an engine with as many cylinders as this had, six, there would be six crankpins really.

The Court: Well, what does the crankpin look like?

A. It is a portion of the shaft, your Honor, where your connecting rod fastens on to the shaft.

The Court: And you say it is a part of the shaft?

(Testimony of Almon E. Owens.)

A. Right. [16]

The Court: Not a part of the connecting rod?

A. No. It is where the connecting rod fastens on to the crankshaft, drives the shaft.

The Court: Well, certainly I understand the function of a connecting rod, but I don't understand where this pin is. Maybe it isn't important.

A. It is important, your Honor.

Q. Mr. Owens, do you think you could draw a sketch to show where the pin would be?

A. I am not an artist, your Honor.

The Court: You don't have to be. Can you draw a sketch sufficient to illustrate what it would be?

A. I believe I can, your Honor. (Drawing.) This is what I refer to. I refer to this part here where the connecting rod fastens on to the crankshaft.

The Court: Isn't that what is called the crank?

A. I wouldn't know. I have always referred to it as the crankpin.

Mr. Boochever: May I see the sketch? I don't imagine there would be much useful purpose in introducing this?

The Court: No. I know what he means now.

Q. Now, you say that you had this—I don't want to get lost in the words again—you had the crankpin turned down by Mr. Wilson?

A. That is right. [17]

Q. Was that fixed then so the engine would work properly?

(Testimony of Almon E. Owens.)

A. After that was done we got Fairbanks-Morse's head mechanic over there to inspect the engine.

Q. And did he make a thorough inspection of the engine then?

A. That is correct; he did. And he took off some of the other crankshaft bearings to open up the crankshaft and found that the crankshaft was very badly scored in other places, some places as much as three-sixteenths of an inch the bearings were scored.

Q. And what did he recommend?

A. He recommended that the crankshaft be taken out and taken to a machine shop and returned.

Q. Now, prior to this had you paid Mr. Wilson for his work on the engine?

A. That is correct.

Q. I will show you what purports to be a check made to Wilson Machine Works dated May 8, 1947, and ask you if you can identify that?

A. That is right.

Q. What is that?

A. That is the check we paid Mr. Wilson.

The Court: That is a check in payment of what?

A. For the turning down of this crankshaft.

The Court: Well, did you also require a replacement of the crankshaft bearings? [18]

A. We did, yes.

The Court: All of them?

(Testimony of Almon E. Owens.)

A. Later on they all had to be replaced, and we had to replace the crankshaft as well.

Mr. Boochever: I think, your Honor, that will be developed in the testimony following. I request that this be introduced as Plaintiffs' Exhibit No. 2, which is a check in the sum of three hundred dollars made payable to Wilson Machine Works.

The Court: It may be admitted and marked Plaintiffs' Exhibit No. 2.

Q. Now, after the Fairbanks-Morse man inspected the engine, what did you find had to be done to it?

A. He recommended we take the crankshaft out and take it to the machine shop and have it returned and, since we had to tear the engine down completely and take the crankshaft out, it was taken to the machine shop and, when it was put in a lathe, it was found that the shaft had been so badly heated that it was warped and twisted, and we couldn't use it at all.

Q. And what did you have to do then?

A. We had to buy a new crankshaft.

Q. I show you two statements from Fairbanks-Morse Company and ask you if you can identify them?      A. Correct. [19]

Q. What are they?

A. Bills from the Fairbanks-Morse & Company for the crankshaft and the insurance.

Mr. Renfrew: No objection.

Mr. Boochever: I request these be introduced as Plaintiffs' Exhibits 3 and 4.

(Testimony of Almon E. Owens.)

The Court: They may be admitted and so marked.

Q. Now, I show you what purports to be a check made payable to the Fairbanks-Morse Company for \$6,056.66. Can you identify that? A. Yes.

Q. What is that?

A. That is for the crankshaft and insurance.

Mr. Renfrew: I object to this on the ground, your Honor, that there is no itemization of this \$6,056.66, no way of connecting it with the repairs of this vessel.

Mr. Boochever: Well, your Honor, I believe that the exhibit just presented prior to this shows clearly what it is for.

Mr. Renfrew: Is that a total of \$6,056.66?

Mr. Boochever: I believe it is.

Mr. Renfrew: If that is correct, it would be——

Mr. Boochever: If it isn't the same, it is within a matter of cents of it. I am sure it is the same.

The Court: Then the objection will be [20] overruled and, if you wish to cross-examine him on it, you may do so.

Mr. Renfrew: All right.

Mr. Boochever: I request this be introduced as Plaintiffs' Exhibit No. 5.

(Whereupon, the exhibit was admitted and marked Plaintiffs' Exhibit No. 5.)

Q. Now, did the Fairbanks - Morse Company then work on taking the engine apart and putting in a new crankshaft for you?

(Testimony of Almon E. Owens.)

A. They tore it down but, in order to get the crankshaft out, and at that time there was some delay in getting the crankshaft, and the boat was moved down to the yard for haul out and ascertaining the damage to the forefoot.

Q. Now, while we are still on the work that Fairbanks-Morse did, I show you what purports to be a statement dated June 10, 1947, and another statement for August 20, 1947, for various work performed on the vessel Adak, and ask you if you can identify those statements? A. Correct.

Q. What are they?

A. They are invoices for work they did on the engine.

Q. And did you pay those bills?

A. Correct. We paid them.

Mr. Renfrew: No objection.

Mr. Boochever: I request—I think these three pages could be introduced as one exhibit, as Plaintiffs' Exhibit 6. [21]

The Court: They may be admitted and marked Plaintiffs' Exhibit 6.

Q. Now, you state that you then had the boat brought up to put on dry dock; is that correct?

A. That is correct.

Q. Where was that done?

A. Pacific Electrical and Mechanical Company's ways.

Q. And did you discover anything else about the vessel when it was put up on dry dock?

A. When the boat was put on dry dock there

(Testimony of Almon E. Owens.)

was some trouble on getting it on, on account of the bow stem having been broken and hanging down in the way, and when it was on the dock it was apparent the bow stem was completely gone. The forefoot was all shattered and of no use at all, and about six feet of the keel was also broken off, and several of the planks were ruined.

Q. Now, were you able to ascertain that damage while the boat was floating in the water?

A. I was not. I didn't see anything, and there was no way I could see under the water there in Lake Union to see that.

Q. Did you have any pictures taken of the fore part of the vessel?

A. We had two pictures taken after it was on the ways.

Q. Now, I show you a picture here, and ask you if you can identify that? [22]

A. I can.

Q. What is that?

A. It is a picture of the bow of the boat.

Q. As it was at what time?

A. After it was on the ways.

Q. About when was that?

A. I believe early, it was early in May.

Q. What year? A. 1947.

Q. And is this a true representation of the way the fore part of the vessel looked at that time?

A. Yes; that is a true representation.

Mr. Renfrew: May I inquire? Mr. Owen, did you take this picture?



(Testimony of Almon E. Owens.)

A. It was taken by a commercial photographer in Seattle.

Mr. Renfrew: Did you see him take it?

A. I didn't see him take it, but I saw the boat afterwards and I would swear that was a correct representation.

Mr. Renfrew: May I have just a moment, your Honor, please? Could you state, if this is a picture of the TP 100, the date that it was taken?

A. It was sometime in May, I believe.

Mr. Renfrew: Were there a number of this type? This was an Army-built boat?

A. That is right. [23]

Mr. Renfrew: And there were quite a number just alike?

Mr. Boochever: Your Honor, I believe this is all a matter for cross-examination.

The Court: Yes; I think so, too, particularly where there is no jury. You can't be prejudiced by this where you have a right to cross-examine.

Mr. Renfrew: I didn't understand.

The Court: I say where there is no jury you wouldn't be prejudiced by the admission of this into evidence even though on your cross-examination the Court would have to exclude it.

Mr. Renfrew: I am of the opinion, your Honor, if he ties it down with the vessel in question, that I wouldn't object. I have talked to the engineer, and he says it isn't, so I object to it.

The Court: Well, but he says it correctly represents the condition of the vessel, that he inspected

(Testimony of Almon E. Owens.)

the vessel at the time it was on the dock, so on that prima facie showing the Court will have to overrule the objection, and it will be admitted.

Mr. Boochever: That, I believe, is Plaintiffs' Exhibit 7.

(Whereupon, the exhibit was marked Plaintiffs' Exhibit 7.) [24]

Q. I show you another photograph, and ask you if you can identify this photograph?

A. That is right.

Q. What is that?

A. That is also a picture of the bow of the boat.

Q. And that is the vessel you have been talking about all the time here? A. That is correct.

Q. And is this a true representation of the way the boat looked when it was taken up on the ways there on or about May of 1947?

A. That is right.

Mr. Renfrew: Same objection, your Honor.

The Court: Same ruling.

Mr. Boochever: I request that this be introduced as Plaintiffs' Exhibit No. 8.

(Whereupon, the exhibit was admitted and marked Plaintiffs' Exhibit No. 8.)

Q. Now, I believe you testified that you were told that the forefoot was slightly bruised by striking a log. Would you show, would you indicate where the forefoot is on that picture?

A. I would say it was gone.

(Testimony of Almon E. Owens.)

Q. Completely gone?

A. Completely gone. [25]

Q. And what other indication of damage is there on that picture to that vessel?

A. The bow stem is completely gone, under water, and the keel is damaged, and the forefoot is not there.

Q. Was the vessel taking water in the forward part of the vessel here where this damage was done?

A. It was ascertained that the vessel was taking water, was full of water in front of the watertight bulkhead in the forepart of the boat.

Q. Had you inspected in front of the watertight bulkhead before you purchased the vessel?

A. No, sir.

Q. Now, how about the tail shaft of the vessel; when you went about making these repairs, what was discovered regarding it?

A. The insurance company asked us to pull the tail shaft to ascertain its condition, and found that it was badly eaten up with electrolysis.

Q. And what was necessary to be done in that regard?

A. They demanded a new tail shaft before they would give us any insurance on it.

Q. And did you have a new tail shaft put in the vessel?      A. We did.

The Court: Was that a bronze tail shaft?

A. Steel bronze covered in the bearing. [26]

The Court: Bronze coated?

(Testimony of Almon E. Owens.)

A. It had a bronze sleeve on the bearings.

Q. Now, I will show you what purports to be a statement from the Diesel Engineering Company of Seattle, Washington, one statement in regard to a new tail shaft, and another one in regard to making a stuffing box, and ask you if you can identify those? A. I can.

Q. What are they?

A. They are the bills from the Diesel Engineering Company for a tail shaft and a stuffing box.

Mr. Renfrew: No objection.

The Court: They may be admitted and marked.

Mr. Boochever: Plaintiffs' Exhibits Nos. 9 and 10.

Q. And I show you a check made payable to the Diesel Engineering Company in the sum of \$1,222.04, and ask you if you can identify that?

A. I can.

Q. What is that?

A. It is the check for the tail shaft and the stuffing box.

Q. As represented by those statements that we just introduced into evidence?

A. That is correct.

The Court: It seems to me that you didn't introduce a check for the—— [27]

Mr. Boochever: For the Fairbanks-Morse? That is right. I will question him on that.

Mr. Renfrew: No objection.

The Court: It may be admitted.

Clerk of the Court: Plaintiffs' Exhibit 11.

(Testimony of Almon E. Owens.)

Q. Now, did you have the battery inspected?

A. That is correct; the batteries were.

Q. And what was the condition of the battery?

A. Very poor condition.

Q. And did work have to be done on the battery?

A. We had to have them overhauled and new plates put in several of them.

Q. And who did that work?

A. The battery company there in Seattle. I have forgotten the name.

The Court: Well, what kind of batteries were they? Wet?

A. Wet batteries; yes, sir.

Q. I show you a check here, and ask you if you can identify this check?      A. Correct.

Q. What is that check?

A. It is payment to the Canal Electric Company for repairing the batteries.

Q. In what sum? [28]      A. \$632.42.

Mr. Renfrew: No objection.

The Court: It may be admitted and marked.

Clerk of Court: Plaintiffs' Exhibit 12.

Q. Now, when you found these damages to the forward end of the vessel, what had to be done in that regard?

A. I had to put in a new bow stem, several new planks, repaired the keel and put in the new fore-foot.

Q. And who did that for you?

A. I forget the name of the outfit.

(Testimony of Almon E. Owens.)

Q. I show you an invoice—

Mr. Boochever: Possibly I could speed this up by showing the invoice and the check at the same time and make them one exhibit if there is no objection.

Mr. Renfrew: No objection.

Q. An invoice of the Pacific Electrical & Mechanical Company in regard to repair of the fore-foot, stem and keel, renew planks, do other work as directed, and three checks, and ask you if you can identify them? A. I can.

Q. What are they?

A. The invoice for the repair of the front end of the boat and the checks in payment.

Q. And what do those checks amount to, those three checks there? [29]

A. I can't remember.

Q. Read them.

A. One check for \$2,390.03; two for \$3,000.00 even.

Q. Six thousand in all for those two?

A. That is right.

Mr. Renfrew: No objection.

The Court: They may be admitted.

Mr. Boochever: I believe these could be fixed together and made one exhibit as they are now.

Clerk of Court: Plaintiffs' Exhibit 13.

Q. Now, I introduced an exhibit there for the work done by the Fairbanks-Morse & Company. I believe it was about 7. It was one of the statements on yellow paper.

(Testimony of Almon E. Owens.)

Mr. Renfrew: That would be Exhibits 3 and 4.

Q. I believe it was later than that. It is Exhibit 6, which is for a statement for \$4,306.25, and an additional statement of \$1,778.94, which statements were in regard to labor and materials in regard to work done on the vessel Adak, machine work and materials, and in regard to that you testified that you paid those bills; is that correct?

A. That is correct.

Q. Do you have the checks for that?

A. I don't have the checks. They have been misplaced some place.

Q. You couldn't locate that? [30]

A. I couldn't locate that.

Q. Now, in addition to those bills that we introduced here did you have any of your own employees working on that vessel? A. We did.

Q. Whom did you have working on it?

A. Mr. Blanchard.

Q. And how long a period was he working on there?

A. He worked there three and a half months, approximately.

Q. And how much was he being paid?

A. Paid him four hundred dollars a month and board.

Q. And he was paid that that period of time?

A. That is correct.

Q. And what other men did you have working on the vessel at that time?

A. We had a Mr. Moore on there as a cook.

(Testimony of Almon E. Owens.)

Q. And in regard to Mr. Moore I show you what purports to be two checks made payable to him, and ask you if you can identify them?

A. I can.

Q. What are they?

A. Checks paid to Mr. Moore there for cooking on the vessel.

Q. And in what amounts are they, so we will have that in the record?

A. \$232.57; \$222.45. [31]

Mr. Renfrew: We object to these as immaterial and irrelevant.

The Court: That is for the payment of whose wages?

Mr. Boochever: Yes, your Honor.

The Court: Whose wages?

Mr. Boochever: Of Mr. Moore's wages, an employee of Owens', who was—I will ask him a few more questions if I may.

Q. Was Mr. Moore's employment on the vessel at that time connected with the repairs of the vessel in any way?

A. Cooking for the crew that was working on the boat.

Q. While they were repairing the boat?

A. That is correct.

Mr. Boochever: With that I request that this be introduced as Plaintiffs' Exhibit No. 14, these two checks as one exhibit.

The Court: Well, so far he has only testified to Mr. Blanchard working on the boat. Maybe he better testify who else was working on the boat.



(Testimony of Almon E. Owens.)

Q. Were there any other of your employees working on the boat?           A. Yes, sir.

Q. Who were they?

A. Mr. Jacobsen; Mr. Eaton; I believe that was all.

Q. Was a Mr. Tucker working on the boat?

A. Yes; that is correct. Mr. Tucker was working on the boat [32] as well.

Q. And did you furnish them board on the boat as part of their contract of employment?

A. That is right.

Mr. Boochever: With that explanation, your Honor, I request that this be introduced as Plaintiffs' Exhibit No. 14.

Mr. Renfrew: Same objection, your Honor.

The Court: Objection overruled. It may be admitted.

(Whereupon, the exhibit was marked Plaintiffs' Exhibit No. 14.)

Q. Now, in regard to Mr. Tucker, whom you mentioned as one of the men working on the boat, I show you what purports to be three checks made payable to him, and ask you if you can identify them?           A. I can.

Q. What are they?

A. They are three checks payable to Mr. Tucker, one in the amount of \$292.90; the second one is the same amount; and the third one is \$289.50.

Q. And what were those checks paid to him for?

A. For his work on the engine.

Mr. Renfrew: No objection.

(Testimony of Almon E. Owens.)

Mr. Boochever: I request that be introduced as Plaintiffs' Exhibit 15, your Honor, the three as one exhibit.

(Whereupon, the exhibit was admitted and marked [33] Plaintiffs' Exhibit No. 15.)

Q. You mentioned Mr. Eaton. I show you two checks that were purported to be made payable to W. E. Eaton, and ask you if you can identify them? A. I can.

Q. What are they?

A. They are checks made payable to Mr. Eaton for work done on the engine, one in the amount of \$219.26 and the other one for \$245.20.

Mr. Renfrew: No objection.

Mr. Boochever: I request they be introduced as Plaintiffs' Exhibit 16.

The Court: They may be admitted.

(Whereupon, the exhibit was marked Plaintiffs' Exhibit No. 16.)

Q. Now, you mentioned Mr. Jacobson working on the vessel, and I show you two checks purported to be made payable to him, and ask you if you can identify them? A. I can.

Q. What are they?

A. Two checks paid to Mr. Jacobson, one in the amount of \$92.45 and the other one \$172.50.

Q. And what were those paid to him for?

A. For his work on the boat there while it was being repaired. [34]

(Testimony of Almon E. Owens.)

Mr. Renfrew: No objection.

The Court: They may be admitted.

Mr. Boochever: That is No. 17.

(Whereupon, the exhibit was marked Plaintiffs' Exhibit No. 17.)

Q. Now, you mentioned Mr. Blanchard worked on the vessel. I show you one, two, three, four, five, six checks made payable to him and ask you if you can identify them? A. I can.

Q. What are they?

A. They are checks made payable to Mr. Blanchard for his work on the boat while it was being repaired.

Q. And what amount are they?

A. \$78.63, \$300.00, \$69.00, \$303.74, \$333.40, and the last check is the same amount as that; two checks for \$333.40.

Mr. Renfrew: Objected to as immaterial. He didn't say what his work was on the boat.

The Court: Well, he didn't specify.

Mr. Boochever: Possibly I should ask one more question to satisfy counsel.

Q. What work was Mr. Blanchard doing on the vessel?

A. Mr. Blanchard was assistant engineer and our representative there in the repair on the boat.

Mr. Boochever: I request that these checks be introduced in evidence. [35]

Mr. Renfrew: Same objection.

The Court: Well, I suppose the objection is

(Testimony of Almon E. Owens.)

based on the ground they aren't sufficiently identified with the position as testified to?

Mr. Renfrew: That is correct, your Honor.

The Court: Is there any way he can do that?

Q. Can you tell a little more in detail what Mr. Blanchard—

The Court: You don't have to say what Mr. Blanchard did, but what did these men, what work were they doing? Was it work that was necessitated by the condition you discovered the vessel in, or what? A. That is correct.

The Court: Objection overruled.

(Exhibit was marked Plaintiffs' Exhibit No. 18.)

(Whereupon, Court recessed until 2:00 o'clock p.m., March 8, 1951, reconvening as per recess, with all parties present as heretofore; the witness Almon E. Owens resumed the witness stand, and the direct examination by Mr. Boochever was continued as follows:)

Q. Mr. Owens, you were, I believe, when you left the stand you were discussing the amount you paid to your various employees working on the repair of this vessel. In addition to those amounts did you furnish them with board?

A. That is correct.

Q. And how much did you spend upon their board?

A. Something over seven hundred dollars. I forget the exact [36] amount.

(Testimony of Almon E. Owens.)

Q. It was over seven hundred dollars?

A. As I remember; yes.

Q. And you know that it was over seven hundred dollars, but you don't remember the exact amount; is that correct?      A. Yes.

Q. Now, moreover, did you pay any additional amounts on that in regard to your traveling back and forth?

A. That is correct. I made four trips to Seattle.

Q. Possibly this letter may refresh your memory on the amounts you spent in that regard, and I would like to know just how much you spent on those trips.

A. The first trip was on the 7th of May, and I came back on the 12th, and I spent \$174.60 on plane fare and \$49.30 for hotel and meals. The next trip was on the 4th of June, and I came back on the 8th. My plane fare was the same amount, \$174.60; and \$34.00 for hotel and meals. Then the next trip was on the 5th of July, and I stayed down until the 12th. The plane fare was the same amount. I spent \$59.60 for hotel and meals. The next and last trip was on the 20th of July, and I came back on the 31st. That amounted, the plane fare was the same amount, and I spent \$93.50 for hotel and meals.

The Court: What is the total?

A. A total of \$934.80. [37]

The Court: Now, will you just state why you had to make those trips?

(Testimony of Almon E. Owens.)

A. These various things would come up in regard to the boat.

The Court: Well, the trips were made exclusively in connection with this business?

A. That is correct.

Q. You had no other reason for going down to Seattle on those trips? A. I did not.

Q. Now, Mr. Owens, did you also make any other payment in regard to parts and supplies for the boat?

A. Yes. We paid Mr. Blanchard for supplies and parts that he bought for the boat while he was on there.

Q. I will show you what purports to be a check made payable to Mr. Blanchard, and ask if you can identify that? A. That is right.

Q. What is that?

A. A check for \$1,678.02 that we paid Mr. Blanchard for supplies and parts that he bought for the boat while he was on it.

Q. Was that during the same period of time that he purchased those parts and supplies?

A. That is correct.

Mr. Renfrew: We object to the introduction of this in evidence on the ground that there is no showing made that [38] it had any connection whatsoever with any damage to the boat.

The Court: I think he should show that they were used to repair the boat because of the condition in which it was found as your testimony shows.

Q. Do you know what these sums were spent for by Mr. Blanchard?

(Testimony of Almon E. Owens.)

A. Mr. Blanchard furnished me a detailed account, but I don't have that.

Q. Do you know what they were?

A. No; I don't remember those.

Q. Were they all for the repair of the boat, or some for ship's supplies?

A. I think there was some for ship's supplies, but I don't know.

Q. You don't know what part?           A. No.

Mr. Boochever: I would like this introduced for identification then, and I will renew my request after Mr. Blanchard testifies, your Honor.

The Court: It may be marked for identification.

Clerk of Court: Plaintiffs' Exhibit 19 for identification.

Q. Now, Mr. Owens, when you ascertained that it was going to be necessary to get a new crankshaft and that these extensive repairs would have to be done to the forepart of the [39] boat, did you notify Mr. Anderson and make demand upon him?

A. That is true. We had our attorney in Seattle notify him and make demand.

Q. And did Mr. Anderson ever reply to that notification?           A. That is correct.

Q. Did he write you a letter?           A. Yes, sir.

Q. I show you what purports to be a letter signed by Jack C. Anderson, dated June 11, 1947, and ask you if you can identify that?

A. I can.

Q. What is that?

A. That is a letter from Mr. Anderson.

(Testimony of Almon E. Owens.)

Mr. Renfrew: No objection.

The Court: It may be admitted and marked.

Mr. Boochever: Plaintiffs' Exhibit 20.

(Whereupon, the exhibit was marked Plaintiffs' Exhibit No. 20.)

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PLAINTIFFS' EXHIBIT No. 20

June 11, 1947,

Seldovia, Alaska.

Mr. A. E. Owens,  
c/o Columbia Lumber Company,  
Juneau, Alaska.

Dear Mr. Owens:

We planned on stopping in to see you, but due to the delay in the shipyard and therefore late in getting loaded, we went straight out from Queen Charollette Sound to Cook Inlet.

Our main reason for wanting to see you was to talk over the difficulties you are having with the tug. We had a letter from Mr. Mills stating that we misrepresented and induced you to purchase the TP-100, which no doubt you know we never did. As you remember the other transaction with the Canadian firm was about to be completed when you insisted on purchasing the boat as she was. You inspected her several times. So we do not feel responsible under the circumstances, as the Canadian firm would of purchased her as is where is, the day you completed the deal. We put our cards on the



(Testimony of Almon E. Owens.)

table and felt that there was nothing we hid from you. You know as well as we do that when you get the boat fixed up it will be well worth the money you have invested.

We are very sorry to hear of the great expense you had to go through in order to put the tug in shipshape. Now as to the forefoot of the boat it was impossible for anyone to determine the extent of the damage before the tug was hauled out. However, we told you the forefoot was damaged. Now next is the crankshaft, that's approximately the same story again. As to the extent of damage to the crankshaft we couldn't say. We told you the crankshaft had been scored and we had hung up one piston and it was running on five cylinders. From your conversation with us you informed us you could purchase a crankshaft for the same motor.

Trusting that you will get much pleasure and prosperity from the boat after it starts work, and that you will feel differently towards the whole thing, I remain,

Sincerely,

/s/ JACK C. ANDERSON.

JCA/la

Admitted in evidence March 8, 1951.

(Testimony of Almon E. Owens.)

Mr. Boochever: Now, at this time, your Honor, I would like the witness to read this letter because there are several points in it, or I can read it, that I think I would like to have explained by him.

The Court: Well, if it is necessary to make intelligible what follows, you may read it. [40]

Mr. Boochever: The letter is to Mr. A. E. Owens, care of Columbia Lumber Company, Juneau, Alaska, dated June 11, 1947, Seldovia, Alaska. "Dear Mr. Owens: We planned on stopping in to see you, but due to the delay in the shipyard and therefore late in getting loaded, we went straight out from Queen Charollette Sound to Cook Inlet.

"Our main reason for wanting to see you was to talk over the difficulties you are having with the tug. We had a letter from Mr. Mills stating that we misrepresented and induced you to purchase the TP-100, which no doubt you know we never did. As you remember the other transaction with the Canadian firm was about to be completed when you insisted on purchasing the boat as she was. You inspected her several times. So we do not feel responsible under the circumstances, as the Canadian firm would of purchased her as is where is, the day you completed the deal. We put our cards on the table and felt that there was nothing we hid from you. You know as well as we do that when you get the boat fixed up it will be well worth the money you have invested.

"We are very sorry to hear of the great expense

(Testimony of Almon E. Owens.)

you had to go through in order to put the tug in shipshape. Now as to the forefoot of the boat it was impossible for anyone to determine the extent of the damage before the tug was hauled out. However, we told you the forefoot was damaged. Now next is the crankshaft, that's approximately the same story again. [41] As to the extent of damage to the crankshaft we couldn't say. We told you the crankshaft had been scored and we had hung up one piston and it was running on five cylinders. From your conversation with us you informed us you could purchase a crankshaft for the same motor.

“Trusting that you will get much pleasure and prosperity from the boat after it starts work, and that you will feel differently towards the whole thing, I remain, sincerely, Jack C. Anderson.”

Q. Now, Mr. Owens, with reference to this letter, first of all he states in here that he didn't misrepresent the vessel to you. Is that statement a true statement?           A. That is not true.

Q. In what way, if any, did he misrepresent the vessel to you?

A. He misrepresented the vessel to us in the extent that he told us it would be less than five thousand dollars to put the vessel in first class condition. That was the representation I bought the boat on.

Mr. Renfrew: Your Honor, I object to this testimony as being repetitious. The witness testified to this this morning.

(Testimony of Almon E. Owens.)

The Court: I am inclined to think it has been testified to.

Mr. Boochever: Well, your Honor, I want to go into [42] each of the items that are mentioned here.

The Court: You mean you are just calling his attention to it?

Mr. Boochever: Yes, your Honor, and see whether he has any comment to make on each of them.

The Court: Objection overruled.

Q. Now, were there misrepresentations in regard to specific things wrong with the boat?

A. That is true.

Q. And in what way were they misrepresented?

A. In regard to the engine, that the only thing the engine needed was one bearing or crankshaft bearing to be re-turned, and that the only thing the bow needed was the smoothing up of the forefoot.

Q. And, now, he states that you purchased the vessel as it was where is; is that correct or not?

A. That is not true.

Q. How did you purchase the vessel?

A. We purchased the vessel for twenty-five thousand dollars with the definite understanding that the repairs would cost less than five thousand dollars.

Q. And was there a definite understanding as to what the condition of the vessel was?

A. That is true.

Q. What was that understanding? [43]

(Testimony of Almon E. Owens.)

A. That it was in first-class condition with these two exceptions.

Q. The two exceptions which you previously mentioned?      A. That is correct.

Q. He says, "From your conversation with us you informed us you could purchase a crankshaft for the same motor." Was there anything of that nature said by you?      A. No, sir.

Q. Could you have purchased a crankshaft? Did you know of any at the time you negotiated the arrangement for the sale of the boat?

A. No, sir.

Q. It was only afterwards that you went in to get a new crankshaft; is that correct?

A. Sometime afterwards.

Q. After you ascertained the damage?

A. That is correct.

Q. Now, Mr. Owens, how long did it take to repair that vessel?

A. Approximately three and a half months.

Q. About how many days was it?

A. I think about one hundred and five days, as I remember it.

Q. And do you know how long it would have taken you to repair the vessel had it been in the condition that was represented to you when you purchased it? [44]

A. Considerably less than thirty days.

Q. Then that would leave approximately seventy-five days at least that you were deprived of the use of the vessel; is that correct?

(Testimony of Almon E. Owens.)

A. That is right.

Q. Now, what use could you have made of the vessel during that period of time?

A. We could have had it towing logs all the time.

Q. Did you inform Mr. Anderson when you originally negotiated the purchase of the vessel just what you wanted the vessel for?

A. That is right.

Q. What did you tell him in that regard?

A. That we were logging and wanted it to tow logs.

Q. And during this period of seventy-five days, which would have been during the period of June, July, and a portion of May, and a little bit of August, of 1947, did you have logs available to tow?

A. We put in something like seven million feet ourselves and had about five and a half million feet that we could have delivered.

Q. And where did you have those logs?

A. They were in Menefee Inlet, which is in the Ketchikan district, and in Frosty Bay.

Q. And where would you have delivered [45] them? A. Sitka.

Q. Now, in regard to that, did someone else do the delivery of those logs?

A. Practically all of them; yes.

Q. And do you know what they charged for the delivery of them?

A. I think four dollars a thousand——

(Testimony of Almon E. Owens.)

Mr. Renfrew: Your Honor, I object to this as hearsay and not the best evidence.

The Court: Well, he is asking him if he knows what they paid. That sounds like it ought to be based on personal knowledge.

Mr. Renfrew: He said did he know that somebody else delivered them and did he know what they got for them. That is not the best evidence, your Honor.

The Court: I didn't understand the question to be in that form.

Q. Do you know what was paid for delivery of those logs?

A. Four dollars a thousand for all of the logs delivered.

Q. And, if you had had the use of the boat, what price could you have obtained for delivering those logs?

A. The same price, four dollars a thousand.

Q. And approximately what portion of that price would have been profit?

A. About fifty per cent. [46]

Q. And how many logs could you have delivered in that period of time?

A. Approximately five and a half million feet.

Q. And that would come to about how much profit that you lost?

A. About eleven thousand dollars.

Q. Now, before you ascertained all this damage to the vessel but after you purchased the vessel, did

(Testimony of Almon E. Owens.)

you have any conversation with Mr. Anderson in regard to a lifeboat?

A. Mr. Anderson came to me and said he had a power barge there that he was trying to get a license to come to Alaska with and that he was unable to find a lifeboat there in Seattle and asked us if he couldn't borrow one of the boats off of the Adak to use on the way north and that he would stop at our camp and deliver the boat there as he came through.

Q. Where was your camp?

A. That was in Menefee Inlet at that time.

Q. And is that where it was agreed that the lifeboat would be returned?      A. That is correct.

Q. And did you agree to loan the lifeboat on those conditions?      A. I did.

Q. Can you describe the lifeboat?

A. It was a steel lifeboat; I should imagine, about twenty [47] feet long.

Q. What was its condition?

A. It was in first-class condition.

Q. Was it equipped?

A. It was equipped.

Q. Did it have oars?      A. It had oars.

Q. Now, was that lifeboat ever returned to you?

A. It was not.

Q. And did you ever have any accounting from Mr. Anderson where that lifeboat is or was?

A. No, sir.

Q. And did you check it when you went north to find out if it was at Menefee Inlet?



(Testimony of Almon E. Owens.)

A. It wasn't there when I came north.

Q. And you never have received that lifeboat to this day?      A. No.

Q. What is the fair market value of that lifeboat?      A. About one thousand dollars.

Q. You stated that when you originally had this conversation that Mr. Anderson stated that the forefoot was slightly bruised. Did he state how it happened?

A. He said it struck a log on the way south.

Q. Have you subsequently had occasion to look at the logbook of the vessel TP 100? [48]

A. That is correct.

Q. I show you what purports to be a logbook and on the outside is "M./S. Helen A," and ask you if you can identify this book?      A. I can.

Q. What is that?

A. The logbook of the TP 100.

Q. And do you know why "M./S. Helen A." was on it?

A. That was their name for it, but it was never documented.

Q. I will ask you to read the entry of February 14—

Mr. Renfrew: I object until it is first offered in evidence and admitted.

The Court: Unless it is entirely preliminary—

Mr. Boochever: I think the objection is well taken. I want to offer this particular portion of the logbook with reference to the entry over here.

(Testimony of Almon E. Owens.)

Mr. Renfrew: You are just offering this particular portion of the log?

Mr. Boochever: That is all.

Mr. Renfrew: No objection.

The Court: It may be admitted.

Mr. Boochever: This page, these two pages of the logbook are what we are offering in evidence. I guess you will have to include the whole book, but that is the only portion that we feel is [49] relevant.

Clerk of Court: Plaintiffs' Exhibit 21.

Q. I will ask you to read the entry under "Weather and Remarks" of the date of February 13 or February 14, 1947.

A. The item is marked under date of February 11, I believe; no; February 13 at 9:25 a.m., marked at Couverden; and in the "Weather and Remarks" column it says, "Struck rock. Backed off. Under way. Done some damage to forefoot and stem."

Q. Now, did Mr. Anderson inform you that they had struck a rock on the way down with the vessel?

A. He did not.

Q. What did he inform you in that regard?

A. That he struck a log on the way down.

Mr. Renfrew: I object. He has answered that two or three times.

The Court: It is repetition.

Mr. Boochever: That is all, your Honor.

(Testimony of Almon E. Owens.)

Cross-Examination

By Mr. Renfrew:

Q. Mr. Owens, I understand that your business is that of logging and contracting, is it?

A. That is right.

Q. And how long have you been engaged in that type of business? [50]

A. Practically all my life.

Q. By that I suppose you mean the past years of your majority anyway?

A. Yes. I would say for many years at least.

Q. And you have been in and around boats considerable, have you?      A. That is right.

Q. And this isn't the first boat you ever owned then, I take it?      A. No, sir.

Q. And you have bought other boats and vessels?      A. Yes, sir.

Q. And now, when you first talked with Captain Anderson or the first time you met him was in Seattle when you heard he had this Army boat for sale; is that right?      A. That is correct.

Q. And you understood he bought that boat at Army surplus?      A. Well, I think so; yes.

Q. And you knew a little of the history about the boat after you discussed it with him before you agreed to buy it?      A. No, I didn't.

Q. Didn't you determine that he had been using the boat in Alaska since he had purchased it?

A. I understand he had been using it; yes.

Q. And, as a matter of fact, when you looked

(Testimony of Almon E. Owens.)

the boat over, [51] there were some men there from a Canadian outfit looking the boat over at the same time, were there not?      A. No, sir.

Q. Do you deny, Mr. Owens, at the time you looked at the engine that there was a mechanic there representing the Pacific Coyle Navigation Company with a micrometer miking the crankshaft where the scored bearing was?

A. There was nobody there to my knowledge.

Q. Now, Captain Anderson took you and showed you all over this boat, didn't he?

A. That is right.

Q. And the engine plate was off where this particular piston was hung up, wasn't it?

A. That is right.

Q. And Captain Anderson explained to you that he had been running that vessel for a considerable period of time on five cylinders with this particular connecting rod detached from the crankshaft, didn't he?      A. That is right.

Q. And now, when Mr. Anderson first offered this boat for sale to you, what was the price?

A. Twenty-five thousand dollars for us to do the repair work as he specified, or he would do the work himself for thirty thousand dollars.

Q. Well, at first he said, "I will fix the boat up and you [52] can buy it for thirty thousand dollars, or if you want to take it and you fix it up it will be twenty-five thousand," isn't that right?

A. I think that is correct.

(Testimony of Almon E. Owens.)

Q. So you bought it for twenty-five thousand dollars?

A. That is correct, with certain representations from Mr. Anderson.

Q. All right. Now, you had had considerable experience with boats before. Did you make any effort to look the boat over?

A. I have already specified there was no way to see under the water in Lake Union and, as far as the engine was concerned, I couldn't take it down. There was no way to know about it except what he told me.

Q. Well, did you ask Captain Anderson when the boat had been out of the water the last time?

A. That I don't remember.

Q. Ordinarily wouldn't you ask him whether or not the boat had been in dry dock or if he had ever seen the hull?

A. Possibly. I don't remember.

Q. Well, now, Mr. Owens, you were going to spend twenty-five thousand or thirty thousand dollars. Don't you recall whether you questioned him about what condition the hull was in and how he knew it?

A. I don't remember. [53]

Q. You don't remember. And now, do you remember Captain Anderson suggesting to you a way of getting the crankshaft out of the boat?

A. No, sir.

Q. Now, let me help you a little bit. Do you recall Captain Anderson telling you how the crankshaft had to be removed from either that boat or

(Testimony of Almon E. Owens.)

a similar boat in Alaska, that they found that by removing the stack on the deck and taking it out the front way it simplified it, oh, more than one hundred per cent; there was nothing to taking it out that way?       A. I don't remember that.

Q. You don't remember that description?

A. No.

Q. You don't recall that at all?

A. I don't recall it.

Q. Now, had you been looking at other boats in the vicinity at the time?

A. I looked at several of them.

Q. And did you know that the Canadian people that I mentioned here, the Pacific Coyle, were interested in buying this boat?

A. All I knew was what Mr. Anderson told me.

Q. Well, did you know that then, the substance of what I stated? [54]

A. I know that he told me that he was negotiating with some Canadian people. That is all I know. I didn't meet them. I didn't see them or know anything about it.

Q. Well, weren't you present when Captain Anderson received a telephone call in which the people told Captain Anderson they wanted to buy the boat and that he turned around to you and said, "Now, Mr. Owens, I can sell it right now, and do you want it or don't you want it," and you said, "Tell him the boat is sold, and I will put the five thousand dollars in the bank for you today"? Do you recall such a conversation?

(Testimony of Almon E. Owens.)

A. I recall he talked on the telephone, but I don't know what was said to him on the telephone.

Q. Well, I am not talking about what was said to him on the telephone. I am talking about what he said to you. Did he not, while he was talking on the telephone, turn to you and say, "Mr. Owen, the Canadian people want to buy this boat now and, if you want it, all right; if you don't, say so," and did you not at that time say to him, "All right; it is a deal. I will put the five thousand dollars in the bank for you. Tell them it is sold."

A. I would say my memory is a little hazy on what transpired at that time.

Q. All right. If your memory is hazy, we will let it go. Now, did you talk with anyone else in Seattle prior to [55] the time you purchased this vessel, the TP 100, now known as the Adak, about the condition it was in?

A. I don't know that I did.

Q. To refresh your memory, didn't another man attempt to sell you a boat and tell you that he knew the condition of the TP 100 and that the crankshaft was absolutely no good in it and would have to be removed?

A. I have no knowledge of anything of that kind.

Q. You don't have any knowledge of it?

A. No, sir.

Q. All right. I will ask you whether or not a man from the——

(Testimony of Almon E. Owens.)

Mr. Renfrew: Just a minute, your Honor, until I get the correct name.

Q. Do you know Mr. A. W. Dawe from New Westminster?      A. I don't think I do.

Q. Well, do you know Mr. Oaksmith?

A. Yes. I know two or three Oaksmiths.

Q. Well, do you know this one?

Mr. Renfrew: Stand up, Mr. Oaksmith.

Q. This gentleman standing here?

A. Yes, sir.

Q. Well, now, did Mr. A. W. Dawe and Mr. Oaksmith talk with you prior to the time that you bought the TP 100?      A. No, sir.

Q. Do you deny that you had a conversation with them in [56] Seattle?

A. I don't remember that.

Q. Just a minute until I finish the question, sir. Do you deny that you had a conversation with them in Seattle previous to the time that you purchased the TP 100 in which they told you that the TP 100 crankshaft was flat and would have to be removed and that the boat was in bad shape and that they tried to sell you a boat they had? Do you deny that?

A. I have no knowledge of that at this time.

Q. You mean you can't recall it or you deny it?

A. I can't recall it.

Q. Do you likewise deny that you stated to them, "Gentlemen, it is all a matter of terms with me. I haven't the cash. Therefore, I have to buy the



(Testimony of Almon E. Owens.)

TP 100 because I can buy it on good terms"? Do you deny that conversation?

A. I have no reason to deny it. I don't know that the thing happened at all.

Q. Well, Mr. Owens, there is nothing wrong with your memory that you know of?

A. This is four years ago. Some things I have reason to remember, and others I don't.

Q. Well, do you mean to tell me that all the experience and difficulty that you had with this boat, that you would not remember such a conversation if it took place? [57]

A. I don't remember that it took place.

Q. Well, Mr. Owens, did you have a competent surveyor representing you on the purchase or the repairs of this TP 100?

A. On the repairs, yes.

Q. Who?

A. On the repairs on the engine we had the Fairbanks-Morse people do it. They put their best man on it.

Q. Well, wasn't that after you had someone else at first work on the bearing, like you testified to this morning? A. You mean when we——

Q. Just answer the question. Either it was or it wasn't.

A. I would like to answer it my own way, and that is——

Q. Well, you can explain it afterwards, but first will you answer my question? Before you had the Fairbanks-Morse engineer, did you not have someone else attempt to repair the damage?

(Testimony of Almon E. Owens.)

Q. We had the damage repaired that was represented to us that was all that was necessary to put the engine in good shape.

Q. All right. Now, did you have the boat surveyed prior to that time? A. No, sir.

Q. You mean then that after you had it repaired, the damage that you could see, that then you had the Fairbanks-Morse people in; is that right?

A. That is right. [58]

Q. Now, it is customary practice before you start fixing one portion of an engine to call in an engineer or a surveyor and have him check it over so that they wouldn't be duplicating the work?

A. I would say that this time we did the work that was represented to us to be all that was necessary to do.

Q. Well, Mr. Anderson at no time told you it was a new boat, did he? A. No, sir.

Q. Did you examine the logbook prior to the time you purchased the boat? A. No, sir.

Q. How many days did you take looking that boat over, anyway?

A. I was there several times.

Q. You had ample opportunity, didn't you?

A. For all I could see, yes.

Q. Well, I will ask you, isn't it common practice on boats of that age to find tail shafts oxidized by galvanic action?

A. Yes; I think that is true.

Q. So that it was no surprise to you to find that condition existed?

(Testimony of Almon E. Owens.)

A. It was a surprise to me that the insurance company said it would have to be renewed before they would allow insurance on it. [59]

Q. All right. But as a man who had experience with boats, you knew how old that boat was and you know when those boats were made, don't you?

A. That is true.

Q. So, you knew how old it was? They were all built about the same time, weren't they?

A. It was only three years old at that time.

Q. That is right. And now, it is frequently common that a boat three years old would have its tail shaft oxidized by galvanic action in that length of time; wouldn't it?

A. It would be possible, but I wouldn't expect it.

Q. Well, but you didn't look for it, did you?

A. I couldn't see it if I looked for it.

Q. And so you bought it without looking for it?

A. I bought it as represented.

Q. Now, you admitted, however, did you not, Mr. Owens, that you never at any time questioned Captain Anderson as to whether the vessel had ever been out of water from the time that he purchased it? A. That I don't remember.

Q. Well, now, didn't you know how Jack Anderson purchased that boat?

A. I didn't know at that time.

Q. Well, did you know before you agreed to buy it? A. No. [60]

Q. Well, now I want to call your attention to Plaintiffs' Exhibit No. 1. Plaintiffs' Exhibit No. 1

(Testimony of Almon E. Owens.)

is the agreement, Mr. Owens, that you executed with Captain Anderson for the purchase of the boat, and it is dated the first day of April, 1947. Now, the first paragraph in the agreement under "Witnesseth" says, "That whereas first parties have purchased from the War Surplus Agency, Fort Richardson, Anchorage, Alaska, one TP 100 Army Tug and passenger boat for which first parties presently hold delivery certificate and which boat is presently located at the A. R. B. Packing Company dock, Lake Union, Seattle, Washington." Now, certainly you knew at that time that Captain Anderson had purchased this boat from the Army Surplus at Fort Richardson, didn't you?

A. That is true.

Q. You knew that he didn't even have a bill of sale from the Army Surplus when you bought it; isn't that right?

A. I wouldn't say that it wasn't or that it was. I didn't know whether he had a bill of sale or not at that time.

Q. Well, calling your attention to paragraph designated as number "(2)." "It is understood and agreed that the sale of said boat shall be effected at the earliest possible date and as soon as the First Parties have procured a due and legal bill of sale covering said boat and the documentation thereof, unless it is possible that the [61] documentation may be procured through the Second Parties in which event the sale shall be effected as soon as the bill of sale has been procured by the

(Testimony of Almon E. Owens.)

First Parties." Now, does that refresh your recollection? A. That is correct.

Q. And you knew that he didn't have a bill of sale from the Army and that the boat wasn't even documented as a civilian craft?

A. He had some sort of a bill of sale, not a regular bill of sale. He had some sort of paper at the time we bought the boat.

Q. He had a receipt for his money; that is all he had; the boat wasn't even documented through the Customs?

A. And it wasn't documented when we bought it, either.

Q. No; and that is the reason that you couldn't make the full payment. You didn't give him the five thousand dollars at the time you entered into this agreement on April 1st; you put it in escrow, didn't you? A. I believe that is right.

Q. And how long was it before you got the title to the boat so that that five thousand dollars was delivered to Jack Anderson?

A. I don't remember the time.

Mr. Renfrew: May I have just a moment, your Honor, to check? [62]

Q. You took possession of the vessel on April 1, 1947; isn't that true?

A. I believe that is right.

Q. And how did you get possession of it?

A. What do you mean by that?

Q. When you bought the boat she was laying at the Olson & Wing—was that the name of the firm?

(Testimony of Almon E. Owens.)

A. I imagine that is right.

Q. Well, do you know? I don't know, Mr. Owens.

A. I don't know. It was some yard in Ballard. That is all I know.

Q. It was Olson & Wing Shipyard; and then did you not request Captain Anderson to remove the vessel from there to some other shipyard that you wanted to take it to?

A. I believe it is right.

Q. Well, is it right?

A. I said I believe it to be right.

Q. Was that done at your request?

A. Yes, sir.

Q. Did you go along?                   A. Yes, sir.

Q. And you were on the vessel when she was taken under its own power from the place you purchased it to where you wanted it taken?

A. That is right. [63]

Q. And how long a trip is that?

A. A couple, three miles.

Q. Did you have an opportunity at that time to observe the operation of it?

A. To a certain extent; yes.

Q. You could have seen if it was leaking?

A. As far as it was evident; yes.

Q. And you could listen to the engine run?

A. It was a very slow bell.

Q. Well, did you ask him to rev it up?

A. He couldn't rev it up there because it was not allowed in those waters.

(Testimony of Almon E. Owens.)

Q. Did you ask that it be taken out in some other waters?           A. No, sir.

Q. Now, I will ask you whether or not that was on the first day of April that was done, 1947?

A. I don't remember the date. It was sometime in April. I believe you are right.

Q. Well, now, wasn't it on the 20th day of May before you received the documentary papers and turned the five thousand dollars over to Captain Anderson?           A. I don't remember the date.

Q. Well, it wouldn't have been before you got the documentary papers, would it, because that is the very essence of your agreement; isn't that true? [64]

A. I wouldn't know. That is handled by my attorney, and I don't know if I was personally there.

Q. But your attorney held the five thousand dollars; Anderson didn't have it, nor no bank had it; your attorney had the five thousand dollars?

A. That is probably true.

Q. And from the first day of April until the date that you got the title to the boat, the boat was in your possession and your money was in the possession of your lawyer; isn't that true?

A. That is right.

Q. Now, I hand you a copy of what purports to be the application of the owner for the official number, and I ask you if you can remember executing that document, the original of that, on or about the 20th day of May, 1947?

(Testimony of Almon E. Owens.)

Mr. Boochever: May we see that?

Mr. Renfrew: Yes; sure.

A. I think that is all right.

Q. Is that correct? A. I think so.

Q. Now, then from the first day of April until the 20th day of May, before you paid anything on this vessel, it was always in your possession?

A. That is true.

Q. Now, when did you first make any claim upon Captain [65] Anderson for a purported misrepresentation? A. I don't have the date.

Q. Well, did you ever make such a claim?

A. I had my attorney make the demand.

Q. Well, don't you have the copies of the correspondence? A. Not here in my hand; no.

Q. Well, do your attorneys have it?

A. I think so; yes.

Q. Will you step off the stand? Maybe you can ask them to hand it to you.

Mr. Boochever: Your Honor, I don't think that is relevant, correspondence of attorneys.

Mr. Renfrew: Your Honor, he testified on direct examination this morning that he directed that a demand be made upon Captain Anderson, and I want to know when it was.

The Court: Well, if you want to demand the production of a letter he wrote to Anderson, the Court will so order.

Mr. Renfrew: That is what I asked, your Honor.

The Court: The demand should be produced.

Mr. Boochever: Of course they have the original



(Testimony of Almon E. Owens.)

of it, your Honor. If they want the copy, I have it.

Mr. Renfrew: I want to know what you are relying on.

Mr. Boochever: We have a copy of a letter, dated May 17th, if that is what he wants. We didn't feel we could introduce it because it is our file copy is all. [66]

Q. Do you want to look through that, Mr. Owens? Did you ever see this letter that your attorney wrote?

A. Yes, I have seen this copy.

Q. You saw it before it was mailed?

A. No, I didn't see it before it was mailed.

Q. Can you tell me from looking at that whether or not that was the copy that you saw?

A. Yes, I saw this same copy.

Q. And what is the date on it?

A. The 17th of May.

Q. Then would that be the first demand that was ever made on Captain Anderson?

A. To my knowledge that is true.

Q. Then you had had the boat all of the month of April and up until the 17th of May before you made any claim whatsoever; isn't that true?

A. I believe we had to know what the situation was before we could make any claims.

Q. I just asked you a question. You had the boat from the first of April until the 17th of May without making any claim?

A. I think that is right.

(Testimony of Almon E. Owens.)

Q. And likewise you had the money all that period of time; no money had gone over to Captain Anderson; that is true, isn't it? [67]

A. We have answered that two or three times, haven't we?

Q. Well, answer it again. A. Yes.

Q. All right.

Mr. Renfrew: Now, your Honor, I wish to offer this application of the owner for an official number which Mr. Owens has testified to be a copy of the original. You gentlemen have seen it. Do you object?

Mr. Boochever: What is it?

Mr. Renfrew: The application.

Mr. Boochever: I don't see any relevancy, your Honor. I object on that ground.

Mr. Renfrew: The offer is made for the purpose of showing the date Mr. Owens testified he let go of the five thousand dollars and got the title to the boat.

Mr. Boochever: Your Honor, I don't believe the instrument which is offered shows that because it is an application for a number for the boat. It isn't a bill of sale of the boat.

The Court: I think what he contends is that the instrument in connection with his testimony shows it.

Mr. Renfrew: That is right. He testified he did it on that date.

The Court: Objection is overruled. It may be admitted. [68]

(Testimony of Almon E. Owens.)

The Clerk: Defendants' Exhibit A.

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DEFENDANTS' EXHIBIT A

Customs Form 1320  
Treasury Department

Application of Owner for Official Number  
United States Customs Service

Place: Seattle, Washington  
May 20, 1947.

To the Collector of Customs at Seattle, Wash.:

Sir: Application is hereby made, in accordance with the provisions of R.S. 4177, as amended (46 U.S.C. 45), and regulations established pursuant thereto, for an Official Number for the following-described vessel, which is ready for a marine document:

Name: Adak (formerly TP 100) of Ketchikan.

Rig: Oil screw.

Gross tonnage: 185.

Net tonnage: 116.

Register dimensions: Length, 90.8.

Breadth: 24.6.

Depth: 11.5.

Material of hull: Wood.

Hull No.: . . . . .

Horsepower: 450.

Builder: Clyde W. Wood, Inc.

(Testimony of Almon E. Owens.)

Defendants' Exhibit A—(Continued)

When begun: June 14, 1943.

When launched: December 28, 1943.

When built: 1944.

Where built (place and State): Stockton Calif.

Type of engine: Internal combustion, 6 cylinders,  
2 cycles, Diesel.

Engine built by Fairbanks, Morse & Co., at Beloit,  
Wisconsin, in 1944.

Owner: Owens Brothers, a co-partnership of A. E.  
Owens, Fern Owens and R. F. Owens.

Address (street, city, and State): Box 119, Ketchi-  
kan, Alaska.

Service: Towing.

Number of officers: 1. Crew: 3.

Application (is) (is not) made for award of  
visual Signal Letters. This vessel (is) (is not)  
equipped with radio-transmitting apparatus.

I Certify that this vessel has not previously borne  
an official number and has never been documented  
as a vessel of the United States under the above or  
any other name.

OWENS BROTHERS,

A Co-Partnership of A. E. Owens, Fern Owens,  
and R. F. Owens of Ketchikan, Alaska.

/s/ A. E. OWENS,

Capacity: Partner.

Port of Seattle, Washington.

May 21, 1947.

(Testimony of Almon E. Owens.)

Defendants' Exhibit A—(Continued)

To the Commissioner of Customs.

Sir: I transmit herewith the application for assignment of an Official Number for the vessel described above.

OSCAR W. DAM,

Deputy Collector of Customs.

In addition to the information to be given herein, the name or names of any former owner or owners shall be stated on the reverse hereof. If there was no former owner, that fact shall be stated.

This application shall be filed in duplicate when filed with the collector at the home port designated for the vessel; otherwise, in triplicate.

Customs Form 1319, Designation of Home Port of Vessel, must be executed in duplicate and accompany this application.

Former owner or owners:

U. S. War Department.

Jack Anderson, Jr.

#### Steam and Motor Vessels

For steam and motor vessels of 100 gross tons and over, the following additional information shall be given:

Cruising speed, 10 knots; full speed, 12 knots; cruising radius, 3,330 nautical miles.

(Testimony of Almon E. Owens.)

## Defendants' Exhibit A—(Continued)

Fuel ordinarily used, if fitted for burning both coal and oil: Diesel oil.

Fuel capacity (fill in applicable spaces only):

Bunker coal (allow 42 cubic feet to ton of 2,240 pounds) . . . . . tons.

Bunker oil (231 cubic inches to gallon, or 1 cubic foot=7.48 gallons) 10,000 gallons.

Bunker gasoline (231 cubic inches to gallon, or 1 cubic foot=7.48 gallons) . . . . . gallons.

Daily consumption (24 hours) at cruising speed:

Coal . . . . . tons of 2,240 pounds.

Oil 720 gallons.

Gasoline . . . . . gallons.

Forepeak tank: Water.

Aftpeak tank: Fuel.

Side tanks: Fuel and Water.

Double bottom: No.

Draft: Loaded, 12 feet; in ballast, 11.5 feet.

Deadweight capacity, 80 tons of 2,240 pounds.

Passenger capacity: Cabin passengers, 11.

Other passengers: . . . . .; Total 11.

Tankage capacity (exclusive of bunkers): no.

Refrigerator capacity: Number of chambers, no.

Radio set: Type, none.

Fill in appropriate spaces only for above-required data.

(Testimony of Almon E. Owens.)

Defendants' Exhibit A—(Continued)

I certify this to be a true copy of the original Application of Owner for Official Number on file in this office.

[Seal]      /s/ OSCAR W. DAM,  
Deputy Collector.

Custom House, Seattle, Wash., Feb. 27, 1951.

Admitted in evidence March 8, 1951.

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Q. And now, Mr. Owens, you testified to some extent about some batteries to the tune of six hundred and some odd dollars. Did you examine the batteries on the boat before you bought it?

A. I didn't examine every battery to see what condition they were in; no.

Q. In all your experience on vessels you know that sometimes batteries go bad, and sometimes they don't. Did you ask him to try the batteries or turn the lights on or start the generator or anything?

A. No, I didn't do that.

Q. Well, did you inquire as to how old the batteries were?      A. No.

Q. Well, when you inspected the boat, what did you do these several times you were down looking at it and making up your mind; what did you do?

A. I inspected the boat to the best of my ability; all I could see; you can't see into batteries.

Q. Well, did you try them?

A. The lights were on. There was no need to

(Testimony of Almon E. Owens.)

try them. As far as that is concerned, the lights were burning at that time.

Q. Well, did you ask Captain Anderson whether they were new batteries or whether those were the batteries that were on [69] the boat when he got it?

A. I didn't ask.

Q. Well, do you know how long a set of batteries in a boat of that type would last ordinarily?

A. No, I don't know that.

Q. You were spending twenty-five thousand to thirty thousand dollars of your money, Mr. Owens. Did you call upon a surveyor to make a check? Did you ask any expert advice if you didn't know yourself?

A. I asked Mr. Anderson the condition of the boat. He told me the condition of the boat, and that is what we bought it on.

Q. Where is this boat at present?

A. In British Columbia.

Q. Are you operating it?                      A. We sold it.

Q. When did you sell it?

Mr. Boochever: I object to that as irrelevant and incompetent.

Mr. Renfrew: Well, now, your Honor, it is not. It may develop that he sold this boat at three times the price that Jack Anderson got for it.

Mr. Boochever: That is completely irrelevant.

Mr. Renfrew: It might not be, your Honor.

The Court: Well, you ought to at least indicate how [70] it would be relevant before evidence of that kind should be admitted. I don't see that it is.



(Testimony of Almon E. Owens.)

Mr. Renfrew: Well, suppose he said he sold the boat right there? He claims that he lost all of this money by his recommendation that he lost a lot of time and one hundred dollars a day and eleven thousand dollars——

The Court: If he sold it right there or within a short time, it might be relevant.

Mr. Renfrew: Well, I will ask him.

Q. As a matter of fact, you sold that boat for sixty-five thousand dollars, didn't you?

Mr. Boochever: I object to that. It is irrelevant, incompetent and immaterial.

Mr. Renfrew: Well, are you afraid to let him answer it?

Mr. Boochever: I think it is immaterial, and I am not afraid of anything.

The Court: You will have to fix the time to show its relevancy on the matter of loss.

Mr. Renfrew: I am sorry, your Honor?

The Court: I said in order to show its relevancy you would have to show the time of the sale if it is a fairly short time or at least not too remote from the time of completion of repairs.

Mr. Renfrew: I would ask your Honor this: If the [71] man claims that he lost eleven thousand dollars by virtue of its non-operation and if he sold it within a reasonable time, or six months or a year after, at a tremendous profit, say twenty, thirty, forty, fifty thousand dollars, I feel it would be relevant.

The Court: Well, it would be relevant if you

(Testimony of Almon E. Owens.)

could show that he could have sold it at that price or some other price at the time that he claims he was deprived of its use. But after all the sale of something of the use of which you have been deprived, the ultimate sale price that he gets for it is irrelevant.

Q. I will ask you, when did you sell it?

A. I sold it just this winter.

Q. You mean 1951 or 1950?

A. Well, I believe it was 1951.

Q. Don't you know when you sold it?

A. I don't have the date in mind; no, sir.

Q. Maybe it will help you; you know enough about your income tax to know if you sold it in 1951, you won't have to worry about it for another year.

Mr. Boochever: I object to that. It is irrelevant.

Q. Was it sold in 1950 or 1951?

Mr. Boochever: I object to that, too. He said, "this winter."

The Court: I think it is too remote. [72]

Mr. Renfrew: Well, then maybe I can use it for the purpose of testing his recollection if he can't remember back two months.

The Court: Well, if you do that, you are bound by his answer no matter what it is.

Mr. Renfrew: Well, all right, your Honor.

Q. Now, your Exhibit No. 2, Mr. Owens, is a check to one Wilson. I understand they were a machine repair agency?

(Testimony of Almon E. Owens.)

A. They were the men recommended to me to do this turning or smoothing job on this crankshaft.

Q. Now, whether they were recommended to you or not, is that the agency that did do the repair?

A. That is correct.

Q. And is that where you had the boat taken by Anderson and Son, and yourself, right after you purchased it?

A. The boat was taken to the Stikine Fish Company Dock in Lake Union, and the work was done there, but not by them.

Q. It was taken from the place where you purchased it over to the Stikine Fish Company, and that is where the work was done, but not by the Stikine Fish Company; is that correct?

A. That is correct.

Q. And then the Wilson repair people came in there and did the work at that place?

A. That is correct. [73]

Q. And that cost three hundred dollars?

A. That is right.

Q. Now, just what did that work consist of?

A. Smoothing up the crankshaft.

Q. Where the one bearing had been disconnected and where that piston had been hung up?

A. Correct.

Q. And when they smoothed up that crankshaft and put the bearing back on, why then it would run on six cylinders instead of five?

A. It was never put back on.

Q. It wasn't put back on?           A. No.

(Testimony of Almon E. Owens.)

Q. Why?

A. Because it developed that the balance of the main bearings on the crankshaft were also run, and the crankshaft in various places had been ground down as much as three-sixteenths of an inch in the bearing.

Q. How did you determine that?

A. By mikes.

Q. Who miked it?

A. Fairbanks-Morse's chief mechanic.

Q. All right. Now, do I understand then that, while you had Wilson make the repair and before you ever tried to run the engine again, you suddenly decided you better make a [74] complete inspection of the whole engine?

A. We did the work in the first place as recommended and instructed by Mr. Anderson. That proved not to be sufficient.

Q. Did you ever start that engine or hook up that cylinder after Wilson did the repair?

A. No, sir.

Q. Then how do you know that it was insufficient?

A. Because we took the caps off of the bearings and found out.

Q. Well, why did you take the caps off of the bearings, because you testified that Mr. Anderson told you it was in good shape; what did you take them off for?

A. Because we wanted to see, and we did see.

(Testimony of Almon E. Owens.)

Q. Didn't you take his word for it, that you testified, when you bought it?

A. We were advised by Fairbanks-Morse to go ahead and do this work, and they did it.

Q. You mean that Fairbanks-Morse out of the blue came out and said, "We know that there is something wrong with the engine in that machine"?

A. That is correct.

Q. Well, where did they get their information?

A. They got their information from the parts that they had been shipping to Mr. Anderson. [75]

Q. From the parts that they had been shipping to Mr. Anderson?      A. Correct.

Q. Now, I suppose that you are prepared to back up that statement?

A. I believe I am; yes. I haven't got the man here to do it with. I can find the man that told me that. He told me that he would suggest that it was very, very advisable to go and inspect the rest of this crankshaft and find out what was the cause that he had been shipping so many of these parts to Mr. Anderson, that he hadn't done——

Q. And now, isn't it true that Mr. Oaksmith, the gentleman who you said you knew, that stood up here, isn't it true that he told you before you ever bought that boat that you couldn't tell by miking that crankshaft whether it was flat or not but that it had been throwing rods for months and months and months and that everybody knew it and probably the crankshaft was flat?

(Testimony of Almon E. Owens.)

A. No, that is not true. I haven't any memory of it at all.

Q. Now, who was it that you say told you that you should have the crankshaft——

A. I forget his name. It was the manager of Fairbanks-Morse Company at Seattle at that time.

Q. Did he just come to where the tug was and looked you up?

A. No, he didn't. I went into his office.

Q. Well, what caused you to go in there? [76]

A. Well, that is hard to say.

Q. You don't——

A. I don't remember why I went there but I went there, and during the conversation he told me that by all means before we took the boat out of Seattle to take off the rest of the bearings and inspect them.

Q. Well, as I understand it then, you are going directly upon what a repair agent talked you into having some repairs done after you had done the work that Captain Anderson, as you claim, told you to do. You didn't even try it, after you spent three hundred dollars with the Wilsons, at all?

A. No.

Q. And yet you rode on it across the lake, or wherever you took it there, and heard the engine running, didn't you?      A. That is right.

Q. Well, where was the crankshaft taken out; right there at that same place?

A. Stikine Fish Company Dock.

Q. Is that where all the repairs were made?

(Testimony of Almon E. Owens.)

A. On the engine; yes.

Q. On the engine. Now, who took the engine out? Who took the crankshaft out?

A. Mr. Ted Engstrom was the man in charge there for Fairbanks, Morse & Company, and he had charge of taking the [77] crankshaft out and tearing the engine down and putting it back together again.

Q. And did he do that work under Fairbanks-Morse direction?

A. He was Fairbanks-Morse's head mechanic.

Q. Superintendent? A. That is correct.

Q. Did they take it out through the tail or did they pull the stack aside?

A. They pulled it out through the tail.

Q. Now, did they do the complete job?

A. Correct.

Q. And how long did it take them to do that?

A. I don't have the dates exactly; no.

Q. It would be included in that bill of Fairbanks-Morse, wouldn't it? A. That is right.

Mr. Renfrew: That is exhibit marked 3 and 4.

Mr. Boochever: Three and 4 is the crankshaft. Six is the work on it.

(Whereupon Court recessed for ten minutes, reconvening as per recess, with all parties present as heretofore; and the witness, Almon E. Owens, resumed the witness stand and the Cross-Examination by Mr. Renfrew was continued as follows:)

(Testimony of Almon E. Owens.)

Q. Do you recall—I think earlier today you testified that you had no recollection of Captain Anderson explaining to [78] you the taking of the crankshaft out by moving the stack instead of through the back there; do you have any recollection of that?      A. No.

Q. Do you have any recollection of telling Captain Anderson that you could get a crankshaft in Juneau?      A. No.

Q. When did you discover this crankshaft was bad and you would have to take it out?

A. After they took the bearings off and miked it and found that it was ground down in the bearings to the place where it would have to be returned.

Q. I want to know when that was.

A. I don't remember the date.

Q. The Fairbanks-Morse people did that?

A. Yes, sir.

Q. And you gave them authority to go ahead and fix up that crankshaft?

A. That is correct.

Q. Had you asked about what it would cost or anything?      A. I don't believe I did.

Q. Were you interested in how much it was going to cost?

A. Certainly, but I wanted to get the boat in shape to run.

Q. Did you ask them how long it would take?

A. I don't think I did; no. [79]



(Testimony of Almon E. Owens.)

Q. You alleged in your complaint that you lost a lot of money by not being able to operate this vessel. Now, didn't you inquire then whether it was going to take thirty days or sixty days or ninety days in order to get it fixed and what it was going to cost? A. I don't remember that.

Q. You don't remember whether you did or not. Well, I want to call to your attention Plaintiffs' Exhibit No. 4, which is a bill from the Fairbanks-Morse people to Owens Brothers and the Adak, and it is for a builder's risk insurance policy; that would be for the insurance to cover them in case anything happened while they were fixing it; isn't that right? A. I suppose so.

Q. Well, now, that covers a period from April 29th to May 29th and from May 29th to June 29th, and that is the bill that you have presented here, so it must have been before April 29th that you discovered this damage? A. I think so; yes.

Q. That would follow, would it not?

A. I would think so; yes.

Q. You still had Mr. Anderson's money at that time, and you did have it up and until after the 20th of May. Now, why didn't you rescind the contract if you didn't want to go through with it? [80]

Mr. Boochever: I object to the question as stating a statement of counsel that he had that money until the 20th of May. I don't think it is in the evidence, and it shouldn't be part of the question.

Mr. Renfrew: Counsel raised the same objection

(Testimony of Almon E. Owens.)

before. He testified it was on the 20th of May, the date he made that application, that he got the bill of sale and that the money was turned over, and the application was put in evidence to illustrate his testimony about that time, and your Honor remembers it.

The Court: I think that is the testimony. Objection will be overruled.

Q. Now, why didn't you rescind your contract then? A. Because I wanted the boat.

Q. Anyway? A. I wanted the boat.

Q. Regardless of what it cost?

A. No, I wouldn't say that.

Q. You didn't even ask to find out?

A. I didn't say I didn't ask. I don't remember what I asked.

Q. Well, did you just figure, "Well, now, I have got Captain Anderson right where I want him, and it don't make any difference if it takes one month, two months, three months, six months or a year to fix that vessel, or what it costs. I am going to have it fixed even though I know before this [81] deal is consummated, and I am going to make him pay for it." Was that your attitude?

A. No, sir.

Q. Well, why didn't you then rescind your contract when you found out about this so-called hidden damage before you had ever paid him a nickle? Why didn't you rescind it at that time? Can you answer that, Mr. Owens?

A. I wanted to get the boat under way and get

(Testimony of Almon E. Owens.)

going. I had already spent a good deal of money on the boat.

Q. Well, now, what did you spend on the boat besides the three hundred dollars up to that point that you had paid Wilson Brothers; what had you spent besides——

A. I spent a lot of money on it.

Q. Well, what?

A. I don't have the figures right here.

Q. Don't give me the figures then. Just tell me for what you spent any money prior to the time that the Fairbanks people started to fix that engine. Now, as a matter of fact, Mr. Owens, you hadn't spent ten cents other than this repair which Wilson Brothers did to the tune of three hundred dollars, and you hadn't even tried the vessel up until the time you got Fairbanks-Morse in there to check the rest of the vessel, and three hundred dollars is all you obligated yourself for; isn't that true?

A. No, that isn't true. [82]

Q. Then tell me what else you had.

A. I had men on the boat there, working on the boat.

Q. Well, doing what?

A. Taking down this engine.

Q. Taking down the engine? Why, didn't you testify a moment ago that the Fairbanks-Morse people took down the engine, they had the entire charge of it, and did the work?

A. My men were working there at the same time.

(Testimony of Almon E. Owens.)

Q. Well, now, how many men did you have working there on the 24th of April?

A. That I wouldn't remember.

Q. You wouldn't start taking the engine down until Fairbanks-Morse told you that it had to be taken down, would you?

A. No. But I don't remember what date they started to do it.

Q. All right. Well, we know they started to do it before at least the 24th of April because that is the date of your insurance policy.

Mr. Boochever: The 29th, I believe.

Q. The 29th is correct. You can't claim that you had any men working on it and spent any money on it prior to that time of tearing it down?

A. I do, though.

Q. Well, for what? What were the men doing?

A. Working on this engine at that time. We had to start tearing this thing down before ever this insurance policy [83] was taken out.

Q. Do you mean you tore it down before Fairbanks-Morse told you to?

A. No. The Fairbanks-Morse man was there before this policy was taken out.

Q. Then you knew that the damage had occurred long before the insurance policy was written on the 29th of April; is that true?

A. I didn't write the insurance policy or have anything to do with it. I don't know a thing about when that was done.

Q. All right. Mr. Owens, the point I want to

(Testimony of Almon E. Owens.)

know is, before you discovered that this engine had to be torn down, what had you expended excepting the three hundred dollars to have the connecting rod honed out?

A. Up to that time probably nothing, but at the same time that was done before this insurance policy was taken out.

Q. All right. Then you knew about the damage even prior to the 29th of April because you had men work on it?           A. That is true.

Q. Then why didn't you rescind the contract then?

A. I didn't want to rescind the contract.

Q. You wanted to go ahead without notifying Jack Anderson of how much it was going to cost or what you had run into and that you were going to hold him responsible?

A. I didn't know what it was going to cost. There was no way [84] to find out what it was going to cost.

Q. Well, you could have asked the Fairbanks-Morse people?           A. They did not know.

Q. You mean they didn't know what it was going to cost to take that crankshaft out and rehone it or put a new one in?

A. Well, rehonning wouldn't have cost as much as a new one by any manner of means.

Q. Well, you didn't notify Jack Anderson until after you had started all that work and knew what you were getting into, and yet you had his money. Now, why didn't you?

(Testimony of Almon E. Owens.)

Mr. Boochever: I believe that question has been asked three or four times.

Mr. Renfrew: I know, but I haven't gotten an answer.

Mr. Boochever: I think he said he wanted the boat.

Mr. Renfrew: Well, we will withdraw that line of questioning for the time being, your Honor.

Q. Now, how many men did you have tearing down this engine?

A. I think at that time we had two men of our own.

Q. Two men of your own. Well, then how many men did Fairbanks-Morse have?

A. They had two.

Q. Am I to understand—

Mr. Renfrew: May I see those exhibits? Six, I think, is the important one.

Q. Now, am I to understand that there were four men working [85] on this engine at the same time? A. That is correct.

Q. Is that possible, Mr. Owens, for four men to be working on an engine?

A. I had them working there, and they were all busy.

Q. How long did the men that you had employed continue to work on the engine?

A. That I wouldn't remember.

Q. Was it just during the time the Fairbanks-Morse men were there, or did the Fairbanks-Morse men not complete the job?

(Testimony of Almon E. Owens.)

A. The Fairbanks-Morse completed the job with the help of our men.

Q. Then from the invoice that the Fairbanks-Morse give us we should be able to determine when the job was completed; isn't that right?

A. I believe so.

Q. And now, the job was completed in the month of July; isn't that true?

A. I think so. I don't have the figures in my head.

Q. I didn't understand you.

A. I say, I think so, but I don't have the figures in my head, the time that was done.

Q. Well, I will hand you Plaintiffs' Exhibit No. 6 and refer you to the second page there. Now, that is your last and [86] concluding statement from the Fairbanks-Morse people; is it not?

A. From this it would appear that it was sometime in July.

Q. Do you have some other bills for labor and material after July that you haven't put in here?

A. I don't know of any.

Q. All right. Then any work your men did would have to be done in the month of July, wouldn't it?

A. As far as the engine is concerned; yes, sir.

Q. Well, now, did they do some other work?

A. They worked on the front end of the boat when it was being repaired.

Q. And where was that being done?

(Testimony of Almon E. Owens.)

A. The yard in Ballard. I forget the name of the yard.

Q. And then after the engine was repaired at the location where that work was done, the boat was taken under its own power and moved, was it?

A. No, sir. It was moved; as soon as the crankshaft was taken out, it was moved. It was some time before we got the crankshaft back from the factory.

Q. I thought you bought a new crankshaft?

A. We did, but it took some time to get it from the factory.

Q. Oh, I see. You didn't mean when you said "back from the factory" that you sent it to the factory and got it back. I misunderstood you. [87]

A. I didn't mean that. I meant it was some time in getting the crankshaft from the factory.

Q. And where was the boat taken from the dock where the crankshaft was removed to have the work done on the forefoot and the keel and the bow?

A. It was taken to the yard at Ballard. I forget the name of the yard. The invoices will give you the name of the yard.

Q. Maybe your counsel will enlighten me on it.

Mr. Boochever: He said the invoices give it. I believe the name of it is Pacific Electrical and Mechanical Yard.

Mr. Renfrew: Is that Exhibits 9 and 10?

Mr. Boochever: Is that correct?

A. I think it is.



(Testimony of Almon E. Owens.)

Mr. Renfrew: May I see Exhibits 9 and 10, please?

Q. Now, I am looking at Plaintiffs' Exhibit No. 13, Mr. Owens, which is an invoice of the Pacific Electrical and Mechanical Company, Seattle 7, Washington, and is dated June 26, 1947, and this says, "To bill you for repairs to the Tug Adak (Helen A). Clean and copper paint bottom." Now, I take it that you had the whole bottom cleaned and copper painted?

A. While it was up there?

Q. While it was up there.

A. Yes, sir. [88]

Q. And you are including that in your bill that you are claiming against Captain Anderson?

A. That is included in the five thousand dollars.

Q. But he didn't tell you that the bottom had been cleaned and painted, and was copper painted, and that that could be done for five thousand dollars?

A. It could be done for much less than five thousand dollars.

Q. He said it could be?

A. I say it could be.

Q. Well, do you expect Captain Anderson to clean and paint and copper bottom the tug? Did he agree to do that?

A. That was included in the five thousand dollars and, if it was as he represented it, it wouldn't have been anything like the five thousand dollars.

Q. Now, I understand that you claim he told

(Testimony of Almon E. Owens.)

you that he would in these repairs not only do the repairs that were necessary but he was going to clean and paint and copper bottom the thing as well?

A. No. I didn't say anything of the kind.

Q. It is true, isn't it, that you are charging him for that job?

A. That job was done; yes, sir.

Q. By your workmen or by the people in the dockyard?

A. By the people at the dockyard.

Q. Now, it says, "Repair forefoot." Who did that? [89]

A. They did it.

Q. And "stem." Who did that?

A. They did it there at the yard.

Q. And the "keel." Who did that?

A. They did it there at the yard.

Q. And "Renew planks." Who did that?

A. They did the job there at the yard.

Q. Well, then what were your men doing at that time?

A. My men were working there with them at the yard at that time.

Q. Well, now, the yard billed you for the job. Were your men working for the yard at the time?

A. No, sir.

Q. You mean they were helping the men at the yard?

A. That is correct.

Q. Did you have them on the pay roll in the capacity of deck hands or engineers or something on your vessel?

A. They were on the pay roll and being paid.

(Testimony of Almon E. Owens.)

Q. In what capacity?

A. Whatever had to be done there.

Q. Well, I understand, whatever had to be done. But let's take this man Moore. He was the cook?

A. He was the cook.

Q. Now, what was Blanchard? What was his capacity?

A. Blanchard was an assistant engineer and working on the [90] engine all the time it was being done, and he was in the capacity of our representative there on the job.

Q. Did he have authority to tell them what to do, and what not to do, and how to fix it, and o.k. it?

A. He had authority to o.k. it; yes, sir.

Q. Why was it necessary for you to make all these trips then?

A. Because he sent up for me to come down. He wanted some advice.

Q. He had the authority but he didn't want to exercise it; is that it?

A. I suppose that would be right.

Q. And now, what was Jackson, or Jacobson—maybe I am mispronouncing the name; that is the way I heard it—what was he hired as?

A. I believe he was hired as a deck hand to work around the boat.

Q. And Eaton?

A. Eaton was an engineer.

Q. And Tucker?

A. Tucker was an engineer.

(Testimony of Almon E. Owens.)

Q. Then you had two engineers, a supervising engineer, a cook and a deck hand?

A. At different times.

Q. At different times. But these men were helping over in the dockyards where the Pacific Electrical and Mechanical [91] Company were doing the work on the vessel; they were just helping them out?

A. They were doing the work that they were asked to do by the yard.

Q. Well, was that in connection with the repairs?      A. That is true.

Q. I take it from your answer that the union doesn't have anything to do down there with these dockyard operations?

A. They didn't in this case.

Q. They didn't at all?      A. No, sir.

Q. Were your men working by the hour or by the month?

A. Mostly by the month, I believe.

Q. Well, did you keep their time?

A. Yes, sir.

Q. And now, do I understand that this work was done while you were waiting for the crankshaft?      A. I believe that is right.

Q. And then was the vessel taken back to the original moorage where the crankshaft was put in?

A. That is right.

Q. And then your men did whatever they were told to do by Fairbanks-Morse when they were putting the engine together?      A. Correct.

(Testimony of Almon E. Owens.)

Q. And how many men did Fairbanks-Morse have working there [92] then?

A. They had two.

Q. Then did your three men at that time help them, or were there two?

A. As far as I know there was only two there at any one time.

Q. Well, the checks would show that anyway, I suppose?      A. I think so.

Q. Well, where were you located when you had to make these trips down there? From where?

A. I was in Menefee Inlet.

Q. Where is that? In Alaska or British Columbia?      A. In Alaska.

Q. How did you get word?

A. By radiophone or by letter.

Q. You had direct communication with radiophone to where?      A. Ketchikan.

Q. Did you frequently talk back and forth to Ketchikan?      A. Every day.

Q. How far were you from Ketchikan?

A. Perhaps a hundred miles.

Q. None of these questions Mr. Blanchard wanted you to come down on could have been answered by telephone or letter or radio?

A. I think not.

Q. What did you have to go down on? Can you remember some of [93] the things?

A. I had to go down. He sent for me to come down.

Q. The Fairbanks-Morse people were competent

(Testimony of Almon E. Owens.)

to take the engine out and put it in; there wasn't much you could do about that other than tell them to do it, was there, Mr. Owens?

A. Probably not.

Q. And isn't the same thing true of the ship's carpenters over at Ballard? They were doing the work on the hull. There wasn't very much you could do to tell them how to fix the hull. You took it over and—

A. Somebody has to be there to do that.

Q. You mean, to tell them to take it over there to do it; is that what you mean?

A. That is what I mean; yes, sir.

Q. Is that what you came down for? "Now you have the engine started; now we are going to have to fix the hull."

A. That wasn't the way it happened, though.

Q. What I am trying to find out, Mr. Owens, is why you had to make these four trips.

A. It was my boat, and I was seeing that it was taken care of and done properly.

Q. You had a man supervising, your chief engineer, and he was in charge, and the principal thing was to get the boat fixed, and you knew you were going to have to fix [94] the engine, and you knew you were going to have to fix the bow. Now, why did you make these particular trips down there, for what purpose?

A. That I can't answer.

Q. All right.

Mr. Renfrew: May I see Exhibit 19, please? I believe this was merely offered for identification?

(Testimony of Almon E. Owens.)

Mr. Boochever: What one was it?

The Clerk: Nineteen was; yes.

Mr. Renfrew: I am sorry, your Honor. I overlooked that.

Q. Mr. Owens, did you ever at any time write a letter to Captain Anderson.

A. I wouldn't say whether I did or didn't.

Q. You have introduced in evidence a letter Captain Anderson wrote to you on June 11th in which he emphatically set forth that you knew that he sold you that vessel where is, as is, and that you bought it with that understanding. Did you ever answer that letter at all?

A. I don't remember that I did.

Mr. Renfrew: May I see Exhibits 14, 15, 16 and 17, please?

Q. Now, I understood you to state you had two men at a time working on your vessel?

A. As far as I remember, that is right. [95]

Q. Your Exhibits Nos. 14, 15, 16 and 17, Mr. Owens, include checks to H. B. Moore, C. R. Tucker, W. E. Eaton and R. F. Jacobson, and they are all dated July 8, 1947, and they run \$232.57, \$292.90, \$219.26, \$92.45. Now, is it true that those four men were working at that time on the boat?

A. The cook was on there all the time for the time the checks show. He would have been there whether the others were there or not.

Q. The checks would indicate you had all three besides the cook.

A. It might be. I wouldn't say it wasn't.

(Testimony of Almon E. Owens.)

Q. Do you know whether these men were actually working on the work being done by the Fairbanks-Morse people or ship's carpenters at Ballard, or were they doing other work on the vessel?

A. On the repair work.

Q. Don't you mean they were painting the vessel and cleaning it up and fixing this and fixing that?

A. No, sir.

Q. I have miscalculated here. I guess it is Exhibit 18 would be the other check. Yes; I see in Exhibit 18 you paid Mr. Blanchard on July 8th, \$333.40. He must have been——

A. He was working all the time the boat was laid up.

Q. July 8th. Did you pay these men by the month?      A. That is right. [96]

Q. Does this represent a month's salary?

A. That is correct.

Q. From June 8th to July 8th, on the date you listed. He worked that entire month on the vessel?

A. That is right.

Q. Whether the work was done by the drydock people or the work was done by the Fairbanks-Morse people?      A. That is right.

Q. You had four men helping with the drydock crew and four men working with the Fairbanks-Morse people, whatever work was done during the month of June?      A. That is right.

Q. Now, on July 31st, I see the same checks, so that would be for the month of July; the same condition is true all during that month; this crew



(Testimony of Almon E. Owens.)

of yours was helping the drydock company or the other company?      A. That is right.

Q. Now, on April 18th, you have a check in here for Mr. Blanchard, \$78.63; that would be for March?

A. I think that was for his fare down to Seattle.

Q. His fare to Seattle?      A. I think so.

Q. Why do you expect Captain Anderson to be responsible for that? What connection could that have with Captain Anderson in any way? [97]

A. Getting a man down there to take care of this boat deal.

Q. You didn't even know on the 18th of April that anything would have to be done to the boat other than what you expected to do to it, did you? You didn't take possession of the boat until the first of April?

A. I had to have somebody on the boat, didn't I?

Q. Well, but you didn't expect Captain Anderson to pay for your having somebody on your boat, did you?

A. But he was on there doing this repair work.

Q. On the 18th of April you have him come down there. You want Captain Anderson to pay for it. That is not a legitimate charge, is it, Mr. Owens, to Captain Anderson?

A. We have allowed five thousand dollars for this various work you might mention.

Q. Would that include bringing somebody down from Alaska, down to Seattle? Well, can you explain this to me? Here is a check on the 4th day

(Testimony of Almon E. Owens.)

of May to Mel Blanchard for \$69.00. What was that for?       A. I don't remember.

Q. Well, would that be for his salary up to that date?       A. I don't know.

Q. Well, why did you introduce it in evidence as an exhibit for?

A. A check paid to him during that time.

Q. For what? Could it have been a case of whiskey? Don't [98] you know what it was for?

A. I don't remember.

Q. All right. Do you have any records that will state what it was for?

A. I don't think I have.

Q. On the same day, May 4th, you wrote another check to him for \$303.74. What was that for?

A. His salary.

Q. That was for the month of April? You didn't pay in advance, did you, Mr. Owens?

A. I don't think so.

Q. Well, do you know whether you paid in advance?

A. No, we didn't pay in advance.

Q. If this was for the month of April, why do you expect Captain Anderson to pay for that? Now, you have testified, Mr. Owens, that had you have had this vessel in operation you could have made eleven thousand dollars with it over a period of time. Now, what do you base that on?

A. On the work that was offered for the boat.

Q. And why do you say that you could have made eleven thousand rather than twelve thousand?

(Testimony of Almon E. Owens.)

A. I am basing that on my own production that I could have delivered.

Q. Well, what production could you have delivered with the boat? [99]

A. Five and a half million feet.

Q. And that would be barring any trouble with it or hitting any submerged objects, rocks or anything like that, and not have any crew trouble; is that true? Well, did you ever produce that much in that period of time?

A. More than that.

Q. Have you any records to show that?

A. I have

Q. Will you produce them?

A. I don't have them here.

Q. You could get them; they are available to you? A. They are available.

Q. And now, Mr. Owens, when you first discussed the purchase of this vessel from Captain Anderson, is it not true that you told him you wanted to get that boat to go south?

A. We had a job south for it; yes.

Q. All right. And now, when you testified this morning that he knew you were going to use this vessel in a lumber industry up in Alaska, actually what you told him was that you wanted the boat to go south?

A. I wanted to go down and get a barge down there that we had bought down there.

Q. Isn't that what you told him?

A. I don't remember what I told him.

(Testimony of Almon E. Owens.)

Q. You don't seem to have any difficulty remembering what he [100] told you. And as a matter of fact, the first trip you made was south, wasn't it?

A. Correct.

Q. You went down to San Francisco?

A. Correct.

Q. And so you didn't use it in the lumber industry until after you had made your use of it down south; isn't that true? A. Correct.

Q. So, at the time that you could have made this eleven thousand dollars up here in the summer time, instead of coming up to make that money, you took a trip to San Francisco on a tow job, didn't you? That is true, isn't it?

A. I have just answered that question.

Q. The answer is "Yes," isn't it?

A. Exactly.

Q. All right. Now, with regard to this lifeboat, you didn't intend to haul passengers on the vessel, did you? A. That made no difference.

Q. Just answer my question. Whether it makes any difference or not, we will leave to the Court. But you didn't intend to haul passengers, did you?

A. We are not in the passenger business; no, sir.

Q. And, therefore, you had no particular use for that lifeboat; isn't that true? [101]

Mr. Boochever: I object to that as irrelevant.

Mr. Renfrew: Well, it is not irrelevant, your Honor. It is a preliminary question.

The Court: He isn't claiming anything for dep-

(Testimony of Almon E. Owens.)

rivation of the lifeboat; he isn't claiming anything for loss of use of the lifeboat, is he?

Mr. Renfrew: Your Honor, I understand that he isn't but I have to put on this testimony in order to show something further which I will promise you I can connect up.

The Court: Objection overruled on that promise.

Q. You had no use for that lifeboat; isn't that true, Mr. Owens?

A. We had bought it, and it was our lifeboat.

Q. I don't want to argue with you, sir. I just want you to answer my questions. You had no use for it, had you?

A. I wouldn't say that.

Q. Did you intend to use it on the tug Adak?

A. We might have.

Q. Well, isn't it true you told Captain Anderson you were going to put a skiff on there, a boat you could use, not a lifeboat but a work boat?

A. But that didn't go on in the place of the lifeboat.

Q. Well, but you wouldn't be hauling the lifeboat if you had another lifeboat on the boat, would you? There were two of them, weren't there? [102]

A. That is correct.

Q. And you weren't going to haul that big lifeboat around; isn't that true?

A. No, that isn't true.

Q. Do you deny that you told Captain Anderson that he could borrow that lifeboat because you didn't intend to use it anyway, it was too big, and you couldn't even get by the wheelhouse, and that

(Testimony of Almon E. Owens.)

you were going to put a work boat on there, one that you could use?

A. We told him he could borrow it.

Q. Well, now, as a matter of fact, if you intended to use this vessel not for a passenger vessel, you didn't have to have that lifeboat; isn't that right? A. That is correct.

Q. And he told you that he had to have a lifeboat in order to comply with the regulations in order to get back to Alaska?

A. That is correct.

Q. And you agreed at the Olson & Wing Dock that he could take this lifeboat; isn't that true?

A. I don't remember where I told him he could have the lifeboat to take up to Alaska.

Q. And he was to drop it off when he came down in the fall? A. No, that is not true.

Q. Well, you knew what kind of business Captain Anderson had? [103]

A. He told me he would leave the boat on the way north.

Q. Now, Mr. Owens, you certainly understood, when he asked for the use of that lifeboat, it was to make him legal on the trip that he had to go to Alaska; didn't you know that?

A. I knew that he promised me that he would leave the boat on the way north, drop into our camp and leave the boat on the way north.

Q. Do you deny that you did not loan that lifeboat to Captain Anderson in order to make his operation to Alaska legal in that he had passengers

(Testimony of Almon E. Owens.)

and he had the type of a vessel that he couldn't be documented without a lifeboat? Do you deny that?

A. I told you that I loaned the boat to him with certain reservations.

Q. You mean that your testimony now is that you were going to let him have the boat just long enough to get out of the Port of Seattle and, when he got up to your place of business, he was to drop it off? A. That is correct.

Q. Then I will ask you further. Do you deny that you told him that "I have no use for this lifeboat, Captain Anderson, at all. You can take it and use it this year. Bring it back when you come south and leave it for me"?

A. I did not ever. [104]

Q. Did you ever buy a lifeboat?

A. I had no reason to.

Q. Maybe you never did. The question was, did you ever buy one?

A. I bought this tug with some lifeboats on it.

Q. Did you ever buy a lifeboat like the one you describe? A. No.

Q. Did you ever inquire as to the selling price of them? A. Yes.

Q. Where and when?

A. Here in Anchorage.

Q. Where did you inquire in Anchorage the price of a lifeboat?

A. Northern Commercial Company.

Q. Did they tell you they had one for sale?

(Testimony of Almon E. Owens.)

A. No, sir.

Q. Did they tell you what the price of them were?

A. They told me about what it would cost to buy one.

Q. A shoe clerk or somebody like that in the store over here? His guess as to what one should cost? Who told you, what a lifeboat would cost, in the Northern Commercial Company in Anchorage?

A. Their boat man.

Q. Well, who?

A. I don't remember his name. [105]

Q. When did you have the conversation?

A. This noon.

Q. This noon? A. Yes, sir.

Q. Was it on the main floor in the building?

A. I suppose so.

Q. Well, I mean by that, on the street floor?

A. Yes, sir.

Q. Just describe who you talked to.

A. I have already told you a man in charge of their boats.

Mr. Boochever: I can give you the name. The last name, I believe, is Denney.

Q. Was that the first time that you inquired, was today noon, as to the value of a lifeboat?

A. Yes, sir.

Q. And why did you put the value of this boat at a thousand dollars?

A. Because that was my estimate of the value of it.



(Testimony of Almon E. Owens.)

Q. You didn't ask anybody in Seattle?

A. No.

Q. And you have never tried to buy one?

A. I haven't had reason to buy one.

Q. You figured that if you bought the boat for twenty-five thousand that the lifeboat ought to have been worth a thousand; is that right? [106]

A. Under the conditions it was taken under.

Mr. Renfrew: Your Honor, I think that is all of my questions at this time. I may have another question or two. I can't formulate my thinking. I have such a cold I can't talk now.

The Court: You haven't anything on me.

### Redirect Examination

By Mr. Boochever:

Q. Mr. Owens, back sometime ago Mr. Renfrew asked you about a conversation that Mr. Anderson had with some Canadian people in regard to the purchase of the boat. When did that take place?

A. As far as I know, there was some conversation in Mr. Mills' office.

Q. Did you talk to any Canadian people yourself?      A. No, sir.

Q. Just what took place as well as you can remember it?

A. There was a call came in for Mr. Anderson on the phone, and he answered it.

Q. Did he say something to you after he talked on the phone?

A. It is possible. I don't remember it.

(Testimony of Almon E. Owens.)

Q. That is all the connection you had with any Canadian sale; is that right?

A. That is right. [107]

Q. Did you examine the logbook when you bought the vessel?           A. No, sir.

Q. Did you discover the logbook before or after you discovered all this damage?

A. Afterwards.

Mr. Renfrew: Just a minute. I object to counsel's use of the words, "Did you discover the logbook." I might infer from that that it was secreted some place.

The Court: Well, there is no jury here, so I don't think it is going to make any difference as to the use of terms.

Q. Now, I believe that Mr. Renfrew asked you if you knew how Mr. Anderson purchased the vessel. I believe you stated, "No." In that regard did you mean you didn't know from whom he purchased it or the details——

A. I didn't know the details. I knew it was a government surplus boat. That is all I did know.

Q. Now, he also asked you if, when the vessel was being moved two or three miles right after you signed the agreement and the Andersons were moving it for you, as to whether you could see whether the vessel was leaking. Now, was it possible to see if the vessel was leaking?

A. There was no evidence of it.

Q. And do you know why there was no evidence of it?

(Testimony of Almon E. Owens.)

A. There was a watertight bulkhead. [108]

Q. In other words there was a watertight bulkhead in the forward part of the vessel and——

Mr. Renfrew: Counsel is doing the testifying, your Honor. Even though there isn't a jury, I think the witness is perfectly competent.

The Court: Well, but it has already been testified that there was a watertight bulkhead and that there was water in it.

Mr. Renfrew: I realize it has already been done, but I still don't want him to repeat it——

The Court: Well, I am not going to be influenced by repetition. It is just a case of where once there is testimony introduced it doesn't make any difference if somebody repeats it. It just becomes a leading question. It may be unnecessarily emphasizing it and, if you object on that ground, maybe I would sustain it.

Mr. Renfrew: I don't want to object, your Honor, because I feel it is repetition, and I wouldn't. Maybe you should object yourself.

The Court: Well, you think I do that too much now.

Mr. Renfrew: I didn't say so. Your Honor, you have accused me of two things in this court that you haven't got a thing to back it up with, so——

(Laughter.)

Q. Now, you stated that, when you did find out this trouble [109] about the engine going to

(Testimony of Almon E. Owens.)

have to have a new crankshaft and these difficulties with the boat, that you did ask your attorney to make demand on Mr. Anderson. Now, Mr. Renfrew asked you to show a copy of that letter but didn't ask anything further about it. Is this a copy of the original letter that your attorney sent to Mr. Anderson?       A. I believe that is true.

Q. And what is the date of that letter?

A. The 17th of May.

Mr. Renfrew: What are you handing it to me for?

Mr. Boochever: I am going to introduce it.

Mr. Renfrew: I object for the reason that I asked him if he had any way of telling when Mr. Anderson was notified and he said that was the only way he could tell, and that is the only purpose that it could be put in for.

The Court: I suppose your objection is on the ground that it is a self-serving declaration?

Mr. Renfrew: Absolutely it is. Absolutely irrelevant.

The Court: It hasn't been offered.

Mr. Boochever: No, it hasn't been offered, your Honor.

Mr. Renfrew: Isn't that the reason you brought it over to me?

Mr. Boochever: I was about to offer it, to [110] show the demand.

The Court: For that purpose I don't think it would be objectionable.

(Testimony of Almon E. Owens.)

Mr. Renfrew: It is not the best evidence, your Honor.

The Court: You mean it is not the original?

Mr. Boochever: Do you have the original of this letter?

Mr. Renfrew: Yes, I do have the original.

Mr. Boochever: Well, then I request that that be introduced.

The Court: Well, now wait a minute. If he testifies that it was a copy made by the same process, for all purposes you don't need to have the ribbon copy.

Mr. Renfrew: Well, now, what is the purpose of this offer?

Mr. Boochever: To prove the demand. On cross-examination I believe it was maintained that there was no showing of demand even though we had a letter of Mr. Anderson's in evidence, and I want to prove the original demand and have it in evidence.

Mr. Renfrew: On the other hand, your Honor, that was not the purpose. The purpose was to show when the demand was made.

The Court: I know, but that doesn't foreclose him [111] from showing that a demand was made and, if he offered it for that purpose, he is precluded from arguing any self-serving declarations. It isn't offered for that purpose.

Mr. Renfrew: Your Honor, I thought it was already in evidence that the demand was made on the 17th of May.

(Testimony of Almon E. Owens.)

The Court: I don't know. I am not sure.

Mr. Renfrew: Counsel knows that. That is the reason I got him to hand a letter to the witness and asked him what the date was.

The Court: If you admit demand was made the same date as the letter——

Mr. Renfrew: Certainly I do.

The Court: Well, that ought to relieve the necessity of receiving the letter in evidence.

Mr. Boochever: Very well. Then it is admitted that the demand has been made setting forth the misrepresentations?

The Court: Yes.

Q. Now, Mr. Renfrew asked you when you got that letter from Mr. Anderson in which Mr. Anderson made statements about selling the boat as is and the Canadian people and so forth and did you answer it at all, and you stated, I believe, "No." Now, did your attorney answer that?

A. Not that I know of.

Q. I show you what purports to be a copy of a letter dated [112] July 24, 1947, addressed to Mr. Jack C. Anderson, and ask you if you have ever seen this copy or a similar copy of this letter. Look that over, please.

A. I remember seeing a copy of that letter now.

Q. You now remember seeing a copy of that letter?  
A. Yes.

Q. What is this a copy of?

A. An answer to Mr. Anderson's letter.

Mr. Boochever: Do you wish to examine this?

(Testimony of Almon E. Owens.)

Mr. Renfrew: Not in the least.

Mr. Boochever: I request that this be introduced in evidence as a copy of—do you have the original of this?

Mr. Renfrew: Yes.

Mr. Boochever: I request that this be introduced in evidence as a duplicate copy of a letter addressed to Mr. Anderson in answer to the letter that Mr. Anderson wrote to Mr. Owens.

Mr. Renfrew: I object to that, your Honor, on the ground that it is a self-serving declaration. Mr. Mills isn't here and, if he wants to testify to various statements in there—it is a letter from an attorney stating certain demands and what his client told him. My question to Mr. Owens was, did he personally ever make an answer to Mr. Anderson. You will notice the letter of June 11th was addressed to Mr. Owens, not his attorney. [113]

The Court: He could answer it by an agent, couldn't he?

Mr. Renfrew: He could. He stated on the stand he didn't remember it.

The Court: That doesn't prevent him, after his recollection has been refreshed, from testifying.

Mr. Renfrew: Under what theory of the law can that document be introduced in evidence?

The Court: Under what theory was the letter of the defendant?

Mr. Renfrew: I didn't offer it. They did. I didn't object. Your Honor let that one in.

(Testimony of Almon E. Owens.)

The Court: I leave everything go in if it isn't objected to.

Mr. Renfrew: I am objecting to this. I would like to know under what theory it could possibly be admissible.

Mr. Boochever: I believe, your Honor, it is admissible after counsel opened it up by his question himself in cross-examination and asked if there was any answer and why there wasn't, and that we can go ahead and show how there was an answer made and that there was a denial made.

The Court: I think you could if he was the one who offered it in evidence, but where he doesn't offer it in evidence, you offer it, I am inclined to think it is inadmissible.

Mr. Boochever: He is the one who brought that subject [114] up in cross-examination and asked did we answer.

The Court: But, if you bring up a subject, that doesn't open the door to hearsay.

Mr. Boochever: This isn't hearsay, your Honor. This is a statement of an answer to the contentions made in that letter, an answer of the man's attorney, his agent in the matter.

The Court: That would be perfectly correct if, as I say, he offered the letter, but you offer it. Now, you propose to——

Mr. Renfrew: To bolster it up.

The Court: I don't believe it is admissible.

Mr. Boochever: Well, your Honor, the letter came in evidence without objection, and their side



(Testimony of Almon E. Owens.)

went into the question of whether it was answered and why it wasn't answered and whether any denial was made of the allegations. Well, they can't go into that and then say, "No; we won't let you show what answer you made or what denial you made." That certainly isn't just.

The Court: Well, but on the other hand, if a party or counsel permits something to go in that might have been successfully objected to, it doesn't mean that you waive objection for all time. He can object to the very next offer. The only question, as I see it, is whether it can be said that the reply is such a part of the other exhibit, since [115] it was elicited by the other exhibit, to permit it to go in. If it was something he himself wrote, it might present a different situation. I am inclined to think it is hearsay.

Mr. Boochever: Moreover, your Honor, if there is any hearsay, it is before the Court and the Court is competent to disregard any part of that letter for hearsay reasons. We want to show it was replied to, and counsel brought it out; he opened the door for it.

Mr. Renfrew: I didn't anything of the kind. I asked the witness whether or not he, as an individual, had ever made any reply to the letter which he introduced in evidence as being addressed to him as an individual, and he said that he couldn't remember whether he did or not, and that was all that was said about the matter.

Mr. Boochever: That is right, and on redirect

(Testimony of Almon E. Owens.)

examination we can show through his agent he did make a reply. It is proper redirect.

The Court: But you want to show it to prove or disprove what?

Mr. Boochever: We want to show it to refute the more or less accusations made by the defendants' counsel that we did nothing about that letter and did not attempt to answer it or refute it in any way.

Mr. Renfrew: He has testified he answered it, his agent did. [116]

The Court: Well, I think we get back to my original point. It would be proper if the letter were offered by the defendant and admitted; then of course you could introduce the reply or answer; but that isn't what happened here. The objection will have to be sustained unless you could show, for instance, that it shows the relation between the parties entering or consummating or culminating in something else that is material here.

Q. Now, Mr. Owens, there was some testimony in regard to the date of the consummation of this sale, in other words the date that the money changed hands. Now, in order to refresh your memory on that point, I would like you to examine the letter written by your counsel, Mr. Mills, to Mr. Anderson, dated May 17, 1947.

Mr. Renfrew: I object to counsel stating what a document is and handing it to a witness. That is improper. This man obviously doesn't know what his attorney is doing; he don't know what his en-

(Testimony of Almon E. Owens.)

gineer is doing or what anybody else is doing. Now, he hands him a letter, tells him what it is. That is improper, your Honor, even before a Court. He hasn't any right to lead the witness no matter who is hearing the case.

The Court: I don't think that is objectionable. It simply eliminates asking a lot of questions and getting into the same thing in a roundabout [117] manner.

Mr. Renfrew: Then we might as well throw the rules out the window.

The Court: Well, if you hand the witness something, no matter what it is, you can say, "I hand you so and so." You don't have to say, "Now, take a look at this and, if you can tell what it is, tell me."

Q. Now, Mr. Owens—

Mr. Renfrew: He hasn't answered that question yet, and I assume your Honor allowed him to.

The Court: Maybe he wants to abandon the question.

Mr. Boochever: As a matter of fact, in the meantime I have lost my recollection of the question. I assume the witness has too.

The Court: He can abandon the question if he wants to.

Q. Mr. Owens, does that refresh your recollection as to the date the sale was consummated? I would like you to look particularly at the first paragraph of the letter.           A. That is right.

(Testimony of Almon E. Owens.)

Q. Does it refresh your recollection as to when that sale was consummated?

A. That is right.

Q. And when was it?

A. The 22nd of April, 1947.

Q. Now, when that sale was consummated, did you have to enter [118] into a mortgage for the balance of the purchase price?

A. That is right.

Q. And, therefore, after that time you were liable for a sizeable amount of money regardless of whether you would rescind the contract or not; is that correct?

A. That is right.

Q. Now, you mentioned you were in the Fairbanks-Morse office and that they suggested that you tear the engine, that you go into the engine further and make a further check on it. Why were you in the Fairbanks-Morse office at that time?

A. I went in there for some supplies, I don't remember what, at that time.

Q. Now, counsel mentioned Mr. Oaksmith over there. Did you say you knew him? Do you know Mr. Oaksmith?

A. Yes; I have met him.

Q. When and where did you meet him, approximately?

A. I remember meeting him in the office of his company there in Seattle.

Q. What were you doing there?

A. Purchasing some supplies for the boat.

Q. Was that before you purchased the boat or afterwards?

A. It was afterwards.

(Testimony of Almon E. Owens.)

Q. Now, counsel there has made some questions about these checks for Mr. Blanchard. What was Mr. Blanchard's salary? [119]

A. Four hundred dollars a month and board.

Q. Did he receive that during all that time?

A. Yes.

Q. Could he have received additional checks other than those?

A. Would have to because those checks don't cover the full salary.

Q. Now, Mr. Renfrew questioned you about taking the vessel south after you got it fixed up and that you spoke to Mr. Anderson and told him you were going to take it south. Was that to permanently use the vessel south?

A. We just took it down to get our own scow at Antioch.

Q. And what were you going to do with that scow, or did you do? A. Brought it to camp.

Q. Did you bring it back up to Alaska?

A. Yes.

Q. For use in what regard? What purpose?

A. As a camp for the logging camp.

Mr. Boochever: That is all, your Honor.

### Recross-Examination

By Mr. Renfrew:

Q. You stated, Mr. Owens, that you didn't meet Mr. Oaksmith until after you bought the boat?

A. I don't remember that I did. [120]

(Testimony of Almon E. Owens.)

Q. You don't remember you did so state?

A. That I did meet him before; I don't remember that.

Q. Did you meet Mr. Dawe?

A. I don't remember that I did; no.

Q. You were staying at the New Washington Hotel, weren't you, when you were buying this boat?      A. I believe that is right.

Q. Don't you remember, Mr. Owens, that you got a room at the New Washington Hotel for Mr. Dawe?      A. I can't remember that.

Q. You don't recall that?      A. No.

Q. You don't recall Mr. Dawe and Mr. Oaksmith and yourself discussing the possible purchase? Mr. Dawe is the man who tried to sell you the other tug; don't you remember that you had been looking all over Seattle for a tug?

A. The whole Pacific Coast as a matter of fact.

Q. Well, now, Mr. Dawe is the man you picked up in front of the Pan American Airlines office and went over to the New Washington Hotel and got him a room?      A. I don't remember.

Q. You don't remember?      A. No, sir.

Q. You don't remember Mr. Oaksmith being there and telling you that the TP 100 had a flat crankshaft in it? [121]      A. No.

Q. And you were telling him in Mr. Dawe's presence that you would like to deal with Mr. Dawe but that you couldn't because finances is what interested you and you had to buy at the price range where you could get the terms?

A. I don't remember that.

(Testimony of Almon E. Owens.)

Q. It is true, isn't it, that you couldn't have paid any other way?      A. No.

Q. There was no incentive as to you buying it for five thousand dollars down and two thousand dollars a month?

A. No. I had other ways of getting money.

Q. You would have had to pay eight per cent interest?

A. I would have had to pay that anyway.

Q. Eight per cent isn't even a legal rate in Washington, is it?      A. I don't know.

Mr. Boochever: Yes, it is.

Q. Now, you have suddenly remembered that this deal was consummated on April 22nd according to what you told your counsel?

A. I read a letter that was sent at that time.

Q. Are you going on what the letter from your attorney said?

A. That is all—I can't remember all those things back four years ago. [122]

Q. Oh, yes. Where was the logbook?

A. It was down in a locker under the chart.

Q. Where?

A. In a locker under the charts.

Q. In a locker under the charts in the pilot-house?      A. Yes, sir.

Q. Where the logbook ordinarily is kept on any vessel?      A. No.

Q. Where do you ordinarily keep it?

A. We kept it in the upper drawer with the charts.

(Testimony of Almon E. Owens.)

Q. In the upper drawer with the charts; and this was just below it in the locker?

A. It was clear down on the floor in the locker.

Q. Hidden there?

A. Not necessarily hidden.

Q. Did you inquire about the log when you bought the vessel?           A. No, I didn't.

Q. Now, you talked about this conversation in Mr. Mills' office. That is your lawyer; is that right?

A. That is right.

Q. And while you were in his office the telephone rang, and didn't I understand you to say Captain Anderson answered it?

A. He was called to it.

Q. Called to the phone. And at that time he turned around to [123] you and said, "The Canadian people want to buy the boat. Now, do you want it or don't you? I have got to let them know."           A. I can't remember those words.

Q. Well, maybe not the exact words; but that was the gist of the conversation; is that right?

A. I believe that is right.

Q. And you said, "I will take it, and I will have the five thousand dollars in here for you tomorrow." Is that the gist of the conversation?

A. Something like that.

Q. That is all, Mr. Owens.

Mr. Bouchever: That is all.

The Court: I have some other matters to attend to at this time, so we will adjourn.

Mr. Renfrew: I would like to have an indication



from counsel as to the number of witnesses he is going to have, so I can——

Mr. Boochever: One, and possibly two more, and the deposition.

Mr. Renfrew: Probably two more?

Mr. Boochever: One, and possibly two.

(Whereupon Court adjourned until 10:00 o'clock a.m., March 9, 1951, reconvening as per adjournment, with all parties present as heretofore; whereupon the trial proceeded [124] as follows:)

### MEL BLANCHARD

called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Boochever:

Q. What is your name?

A. My name is Mel Blanchard.

Q. And where do you live now?

A. Orick, California.

Q. What is your present occupation?

A. Logger.

Q. And for whom do you work?

A. Arcadia Redwood.

Q. Is Mr. Owens, the plaintiff, or Owens Brothers associated with that company at all?

A. No, sir.

Q. Now, in 1947, for whom did you work?

A. Owens Brothers.

(Testimony of Mel Blanchard.)

Q. And did you work in Seattle at all for them in 1947?      A. Yes, I did.

Q. How did you happen to come to Seattle?

A. Well, after Mr. Owens had purchased the boat.

Q. What boat is that?

A. At that time it was the TP 100, but later the Adak. He [125] asked me to go down to Seattle for the period of two or maybe three weeks to get the boat in condition to run and then we was coming on to Alaska.

Q. Mr. Blanchard, would you pull that microphone up a little closer?

The Court: You will either have to speak loud enough or, if you don't, you will have to use the microphone.

Q. Now, did you go on down to Seattle?

A. Yes.

Q. About when was that?

A. Approximately the middle of April. It could have been a little bit longer.

Q. Of what year?      A. 1947.

Q. And when you went down there did you meet the defendants in this case, Mr. Anderson—Senior and Junior?      A. Yes.

Q. About when and where did you meet them?

A. Well, I think it was about the second day of my arrival and some place in Seattle. I don't know exactly where it was.

Q. And who were present at that time?

(Testimony of Mel Blanchard.)

A. Mr. Anderson, his son, Mr. Owens and myself.

Q. Did you have any conversation with the defendants at that time? [126] A. Yes.

Q. Did Mr. Anderson, either of them, state—make any statements to you in regard to this boat, the TP 100?

A. Yes. During the time that we were together why he made the statement that the crankshaft had to be, or one pin bearing had to be smoothed up and also the main bearing replaced and that there was slight damage to the forefoot.

Q. Did he state as to the condition of the rest of the vessel?

A. As far as the condition of the rest of the vessel, those two things; but I do remember though of him stating that he had had the boat on drydock some place in Seattle; I don't know just where.

Q. Now, did you go to work on the vessel?

A. Yes.

Q. And what were you engaged in doing on the vessel?

A. Well, I was engaged in various kinds of work, mostly to the engine room.

Q. Mostly to the engine room? A. Yes.

Q. And whom were you working with when you went to work on there?

A. I was working with the Fairbanks engineer, Ted Engstrom.

Q. And what did you find had to be done to the engine?

(Testimony of Mel Blanchard.)

A. It was found that the crankshaft had to be removed. [127]

Q. Why was that necessary?

A. Because it was impossible to do the work on the boat. It had to be taken out and put in a lathe because not only one but several had to be turned down.

Q. Several what?

A. Several bearings on the crankshaft.

Q. Now, what else did you find in regard to the condition of the engine?

A. Well, we found that we had to rebore out all the oil columns that supplied oil to each bearing.

Q. Why did you have to do that?

A. Because they were filled full; because the oil columns were plugged with melted babbitt from the bearings.

Q. What would the effect of that be on the operation of the vessel?

A. As long as your oil columns plug with babbitt or any other form of metal, it would be impossible for oil to reach the bearing.

Q. Was there any other method you noticed for the oil to reach the bearings in this case?

A. Yes. There was a temporary arrangement hooked up there, and we noticed that was on the boat when we arrived.

Q. Was that an arrangement that could have been used for any length of time?

A. No, it was not. [128]

(Testimony of Mel Blanchard.)

Q. Now, in regard to the engine, what was the condition of the base of the engine?

A. The base of the engine we found, of course, we didn't find it right away, but at the time we were putting the new crankshaft in we found the base of the engine, where the lower half of the main bearing goes into your base, was warped.

Q. Could you tell why that was warped or what caused that?      A. From the heat.

Q. Now, when you took the crankshaft out, what was necessary to be done in order to take that crankshaft out?

A. I had to get a ship's carpenter to come down there and tear out just a piece of the watertight bulkhead between the engine room and cargo hold.

Q. Is that the watertight bulkhead in the front of the vessel or rear of the vessel?

A. In the rear of the vessel. Also we had to take out part of the hatch coaming on deck, and naturally we had to break the motor loose at the base. It was bolted to the base, and jacked it up about five feet in the air to remove the crankshaft.

Q. What was the size of that crankshaft?

A. Twenty-two feet long and nine inches in diameter.

Q. And do you know what was discovered, when they removed the crankshaft and took it out, in regard to its condition? [129]

A. After the crankshaft was put in the lathe, they found it had been warped from the heat.

Q. Could it be used?      A. No.

(Testimony of Mel Blanchard.)

Q. What was, therefore, necessary?

A. It was necessary to have a new crankshaft.

Q. Now, how long was it after you went to work down there before you discovered that you had to have a new crankshaft? Was it several weeks or a few days or what?

A. I would say in the vicinity of about two weeks.

Q. Now, after that was discovered, did you make any other discovery about the condition of the vessel?

A. Yes. One day I was turning around, turning the boat around, for some reason or other. I wanted to get something on the deck or off the deck. I forget which, but in turning the boat around at the dock why the sun was shining just right underneath the water where I could see just underneath the waterline. I noticed that there were slivers hanging down, indicating that the boat was damaged underneath the water.

Q. Was that the first time that you had noticed that?           A. Yes.

Q. Could you see that normally when the vessel was in the water?           A. No. [130]

Q. Could you see the entire damage to the front end of the vessel at that time?           A. No.

Q. Just some slivers?

A. Yes. Just that there was damage.

Q. Did you make an investigation of that then?

A. I did. I took a look in the forward compartment, sometimes called the chain locker, which

(Testimony of Mel Blanchard.)

has the watertight bulkhead between it and the engine room, and there was water in the watertight bulkhead.

Q. Is that the first time you looked in there?

A. Yes.

Q. And did you do anything about trying to get the water out of there or not?

A. Yes. I was curious to know whether the water had leaked in from the top or had come in through from where it was damaged, so I got a man to help me, and we tried to bail it out, and we could draw it down maybe an inch or two, but it would immediately rise back to its proper level.

Q. What was the level of the water inside that bulkhead as compared with the level of the water outside?

A. The water on the inside was the same level as the outside.

Q. And you were not able to bail it out?

A. No.

Q. Would you put the microphone a little closer to you. [131] After that happened, what was done in regard to the vessel after you made that discovery?

A. After I made that discovery, I informed Mr. Owens in Alaska.

Q. And did he come down?

A. That is right.

Q. And then what was done?

A. He made arrangements to put it on drydock.

Q. And during this time that you were work-

(Testimony of Mel Blanchard.)

ing on the vessel were there any other of Mr. Owens' men working on the vessel?

A. Yes, there were; Mr. Tucker, the chief engineer, and there was Mr. Eaton—he was also an engineer, second engineer or assistant engineer, whichever way you want to word it—and Mr. Jacobson, Mr. Moore.

Q. And were all of those men—what was Mr. Moore's occupation there?

A. Mr. Moore was a cook.

Q. Cooking for the men working on the boat?

A. That is right.

Q. What were the other men doing in regard to the boat?

A. Mr. Eaton and Mr. Tucker and myself and Mr. Jacobson, we all more or less was in the engine room getting this crankshaft out. We more or less put all our attention to that one part of the boat. [132]

Q. Then you got the boat put up on drydock, you said? A. Yes.

Q. What did you discover about the condition of the front end of the vessel when it was put up on drydock?

A. We discovered immediately that it was very much damaged.

Q. Now, I show you two exhibits here—

Mr. Boochever: I would like those two photographs please.

Q. I show you Plaintiffs' Exhibit No. 7 and



(Testimony of Mel Blanchard.)

ask you if you can identify what that is a picture of?      A. Yes. That is the boat in question.

Q. Do you know about when that picture was taken?

A. We got the boat up on drydock after dark. We had some difficulty getting the boat up on the ways on account of this stem iron hanging down and knocking out chocks on the ways, and these pictures were taken the next morning.

Q. Were you present when the pictures were taken?      A. I was, yes.

Q. And did you see the pictures after they were developed?      A. Yes.

Q. And is this a true representation of the way the vessel looked when it was brought up on the ways there?      A. Yes.

Q. Now, I show you Plaintiffs' Exhibit 8 and ask if you can identify that? [133]      A. Yes.

Q. What is that?

A. The same picture, a different angle.

Q. And the same circumstances in regard to taking this picture apply as to the other one?

A. Yes.

Q. And that is a true representation of the way the vessel looked at that time and place?

A. Yes.

Q. Now, where is the waterline of the vessel as indicated on this picture; where was the waterline?

A. I would say the waterline was just above the top of this picture.

(Testimony of Mel Blanchard.)

Q. In other words, you wouldn't even see the waterline on that picture? All that is below the waterline?

A. That is right.

Q. And in regard to this picture, can you show where the waterline would come on the vessel?

A. The same as that, only you might see a little bit of it in this one corner, but the front you couldn't see. It is beyond the picture and above.

Q. Now, in regard to this damage, Mr. Blanchard, does this damage constitute a bruised forefoot, would you say?

A. No.

Q. What is the damage there? [134]

A. The damage is, the lower part of the stem is damaged considerably. More or less it meant a new stem, is what it meant. The forefoot, you might say, is completely gone, and you can see there is new planking to be had.

Q. Was water running in and out through this damaged area here? Could it run in and out?

A. Yes.

Q. Now, prior to the time of taking the vessel up on the ways and discovering this extensive damage, did you have any additional conversation with the defendants besides the one we referred to before?

A. Well, regarding this lifeboat; yes.

Q. What happened in regard to that?

A. Mr. Owens informed me that Mr. Anderson was——

Mr. Renfrew: Just a moment. Is this conversation, do I understand, in the presence of Mr. Anderson?

(Testimony of Mel Blanchard.)

Q. We aren't interested in what Mr. Owens informed you. I want to know what conversation you had with Mr. Anderson.

A. Mr. Anderson came there with his power barge to borrow this lifeboat which, I understood, he asked permission to borrow from Mr. Owens.

Q. What was the condition of the lifeboat?

A. The lifeboat was in good condition.

Q. What was it made of?

A. It was a steel lifeboat. [135]

Q. And what did Mr. Anderson say, if anything, in regard to borrowing the lifeboat?

A. Well, that he wanted to borrow it to make his trip into Alaska to get through the Coast Guard regulations.

Q. Did he say anything about returning the lifeboat?

A. Yes. He was supposed to return the lifeboat to Mr. Owens' camp.

Mr. Renfrew: I didn't hear you.

A. He was to return the lifeboat to Mr. Owens' logging camp in the vicinity of Ketchikan on his arrival in Alaska.

Q. Mr. Anderson told you that? A. Yes.

Q. Now, do you know whether Mr. Anderson returned the lifeboat? A. He did not.

Q. How do you know that?

A. I was up there right after that, and Mr. Anderson told me himself that he hadn't.

Mr. Renfrew: It is admitted by the pleadings. It is surplusage.

(Testimony of Mel Blanchard.)

The Court: Yes.

Q. Now, Mr. Blanchard, what were you receiving as wages while you were working on the vessel?

A. Four hundred dollars a month and board.

Q. Approximately how long were you working on the vessel [136] there?

A. Three and a half months.

Q. These other employees of Mr. Owens' that you mentioned, did they receive their board while working on the vessel? A. Yes.

Q. Did you make any purchases on behalf of Mr. Owens while working on the vessel?

A. Yes.

Q. With funds of your own or with other funds?

A. With funds of my own.

Q. And what did you purchase for the vessel?

A. We had to have various kinds of tools to tear down the engine and remove this crankshaft, and also in the first place we had to get about a thousand feet of timbers down there to jack this foundation up in the air to remove the crankshaft. We had to buy six hydraulic jacks, and we had to also get ahold of some chain hoist to help remove the crankshaft and then in putting the crankshaft back, and before we put it down we had to get an electrical motor to turn the crankshaft on the main bearing to make sure that there was no binding.

Q. Were you ever reimbursed for those expenditures? A. Yes.

Q. I show you Plaintiffs' Exhibit for Iden-

(Testimony of Mel Blanchard.)

tification No. 19 and ask you if you can identify this document? [137]

A. Yes; I remember that.

Q. What is that?

A. That is a check for, to me from Mr. Owens, for the money I had spent to buy things for this boat.

Q. And how much is that? A. \$1,678.00.

Mr. Renfrew: We object to the introduction of this check, your Honor, in evidence as—three reasons. One, it is not disclosed where the itemized account is for equipment. And two, under the witness' testimony, if he bought hydraulic jacks and hoists and tools to remove the crankshaft, he didn't throw them away afterwards, and certainly the value of those tools wouldn't be depreciated to any appreciable extent merely by the use in this business. We feel it is an irrelevant offer and, even if legitimately used, it is not damage in this case.

The Court: It would depend on whether you could do the job by letting it out or by your own crew.

Mr. Renfrew: If a man buys a chain hoist and uses it once to lift an engine or let an engine down, he is not entitled to charge somebody for the hoist forever because he used it once. Those things are—

Mr. Boochever: In regard to the weight and amount of the damage—but I think this is certainly admissible at this point. [138]

Mr. Renfrew: My point is, we don't have any

(Testimony of Mel Blanchard.)

itemization of this stuff. It is an employer-employee relationship, and he shows a canceled check for so much money and says, "I bought something with it."

The Court: Well, in the case of tools or machines of that kind, if they run into money, they would hardly add to the cost of repairs.

Mr. Boochever: The only reason it was required was because of the extensive repairs to the vessel. They wouldn't have bought them otherwise. I agree there is probably a resale value if it can be ascertained.

The Court: That would probably be true, but without an itemization how could you get it in, unless he can testify to the cost?

Mr. Boochever: Of each item, do you mean?

The Court: Each item that is more than merely a hand tool.

Q. Could you testify to the cost of each item at this time, Mr. Blanchard?           A. No, I couldn't.

The Court: Well, what kind of items make up this charge? Expendable? For instance, could you say what proportion of this charge would consist of expendable items? It is all for parts, is it?

A. I don't quite get what you mean. [139]

The Court: Well, what did you buy to that amount outside of jacks and the hoist?

A. Like I said, we had to buy some lumber, some heavy timbers, to jack up this engine with.

The Court: Well, how much of that bill would be represented by items that didn't go into the

(Testimony of Mel Blanchard.)

vessel, for instance, when you got through with the job, you would have left over?

A. We would have left over practically everything.

The Court: You wouldn't have the lumber, would you?

A. No. But it wouldn't go into the engine. Naturally we would have it, but we sawed it into short pieces that you couldn't do anything else with it. If it was eighteen and twenty-foot lengths when we got through, as it was when we got it, maybe we could have.

Mr. Boochever: Your Honor, we will waive that check. It was not included in the items in the complaint. It was discovered afterwards. We thought it was damages but, if your Honor feels it isn't relevant, we will waive it.

The Court: Well, I suppose you can always amend to conform to the proof, but there ought to be a segregation of the items which went into the boat from those like tools that would be left over.

Mr. Boochever: I believe from what he testified none went into the vessel. They went into repairs and left [140] over timbers. The timbers were cut into smaller pieces.

Q. Mr. Blanchard, while you were working about the boat and working around the boat did you discover the logbook of the vessel?

A. Yes, I did.

Q. Where did you find that logbook?

A. It was in the pilothouse.

(Testimony of Mel Blanchard.)

Q. Where in the pilothouse?

A. I don't remember just exactly where it was, but it was in the pilothouse.

Q. And did you look the logbook over?

A. Yes, I did.

Q. When did you do that? Was it before or after you discovered the damage to the front end of the vessel?

A. It was after I discovered the damage.

Q. Did you find an entry in regard to striking a rock?      A. Yes.

Q. Did you bring that to Mr. Owens' attention?      A. I did.

Mr. Boochever: Your witness.

### Cross-Examination

By Mr. Renfrew:

Q. Mr. Blanchard, you say your occupation is logging?      A. That is right. [141]

Q. How long have you been engaged in that type of work?

A. Off and on for about fifteen years.

Q. Down in the Oregon and California country or——

A. No. I have only spent two years in California. The rest of it has been Washington, Oregon and also Alaska.

Q. How much boat experience have you had?

A. Well, the most boat experience that I have had was, before this time, was around cannery tenders and various fishing boats.



(Testimony of Mel Blanchard.)

Q. What do you mean; as deck hand or passenger or what?

A. A little of everything; deck hand part of the time, and maybe I would be in the engine room the next time.

Q. You don't hold a ticket then of any kind; is that it?

A. That is right.

Q. And you are not an engineer?

A. No.

Q. Did you ever tear down a motor in a boat the size of this one before?

A. No, I did not.

Q. Did you ever tear down the motor in any boat?

A. No.

Q. This was your first experience with anything like this, I take it?

A. Anything that size; yes.

Q. How long had you worked for Mr. Owens up to this time? [142]

A. I would say in the vicinity of six months.

Q. And that had been up in the logging operations in Alaska, had it?

A. That is right.

Q. I believe I understood you to state that when you got to working for Mr. Owens he asked you to come down for two or three weeks while the boat was—

A. I was in camp at the time he came to me and asked me to go down to Seattle until this work was cleaned up and more or less help and then bring the boat to Alaska.

Q. After he left the boat and came on north,

(Testimony of Mel Blanchard.)

that is where you had this conversation about you going down to help get the boat up?

A. No. We was in Alaska at the time he asked me to go down, as a matter of fact in camp, and I agreed to go down there under those conditions, that I would only be down there two or three weeks, and we both went down to Seattle that same day.

Q. That was after Mr. Blanchard had bought the boat? A. You mean Mr. Owens?

Q. Yes. Excuse me.

A. As far as I know, he had bought the boat; yes.

Q. After he bought the boat he came back to his logging operations?

A. That is correct. [143]

Q. And got you to go back to Seattle to help fix up the boat and get it in shipshape for the trip? A. That is right.

Q. Then I take it you were not present when Mr. Owens and Mr. Anderson negotiated for the purchase of the boat? A. No, I was not.

Q. And you don't know anything about what they said to each other at that time, and particularly you don't know anything about the conversations that they had?

A. Yes. There is a conversation I was present at the time it was made.

Q. You have already told that to your counsel; but I am talking about the time the boat was purchased.

A. About the purchase, no, I was not present.

(Testimony of Mel Blanchard.)

Q. All right. Now, about what time did you come down with Mr. Owens?

A. As I said before, it was around the 20th of April. I am not sure just what day it was.

Q. How did you come down?

A. Come down by airplane.

Q. Do you remember how you paid for your ticket?

A. Mr. Owens paid for that ticket.

Q. Out of his pocket? A. Yes.

Q. Cash? [144]

A. As far as I know, I don't know how he paid for it. He just handed me a ticket.

Q. You know you didn't pay for it?

A. That is right.

Q. You are positive of that? A. Yes.

Q. Your memory is good? A. Yes.

Q. And you couldn't be mistaken?

A. That is right.

Q. Now, after you got down to Seattle you met Captain Anderson and his son?

A. That is right.

Q. Where did you meet them?

A. Like I said before, some place in Seattle. I don't know exactly where it was.

Q. Was it a chance meeting?

A. I don't remember whether it was a chance meeting or if arrangements were made; I don't know. I was with Mr. Owens at the time I met the Andersons.

Q. What conversation took place there at that time?

(Testimony of Mel Blanchard.)

A. There was quite a bit said about this, that and the other thing. I don't remember word for word, but after we found this other damage to the boat then I did remember certain statements made, and it was about this crankshaft. [145]

Q. Oh, you mean that you didn't remember this conversation that you remember now until after you had found out that the crankshaft would need some additional work to it?

A. No, that isn't what I meant. What I meant was this, that there were some things came clearer in my mind than others, but I do remember Mr. Anderson saying that it was about this crankshaft, and it was just one pin bearing had to be smoothed up and that there was slight damage to the fore-foot, also that he had had the boat on drydock some time or other during its stay in Seattle.

Q. Well, now, as a matter of fact, if Mr. Anderson said anything, wasn't the conversation something like this: "I bought that boat from Army Surplus in Alaska and I just brought it down from Alaska. I have used it up there all season and have just come down with it"?

A. I don't remember of him saying that he used it in Alaska, but I do remember him saying that he just brought it down from Alaska sometime that winter. I don't remember just when.

Q. Did you have a discussion with him about this temporary arrangement for oil which you say you saw on the boat?

A. No, I don't remember anything like that.

(Testimony of Mel Blanchard.)

Q. Was it obviously a temporary arrangement for oiling? Was it difficult?

A. No, it was not difficult. [146]

Q. Anybody looking at the engine could see it?

A. Well, anybody that knew what they were looking for; yes.

Q. Well, for instance, a man, that has been around boats all his life and bought several boats, looking at it could see a hole there with one piston hung up, and knew what he was looking at, would also be able to determine that it was a temporary oiling arrangement?

A. Well, a temporary oiling arrangement, if it had been in this one position where the hole was open, yes, it could have been noticed.

The Court: What is this hole in?

A. An inspection plate that you take off to prime the motor.

The Court: Well, but you referred to an oil column. What do you mean by that? An oil duct?

A. An oil column is a hole that runs the full length of your motor at the base, and also there is a hole goes up into each main bearing from the main oil drum, and one hole goes up for the intake of the oil, and also for the return. There are two holes. The oil makes a complete revolution. It goes through under pressure and is also forced up through each saddle and to each main bearing under pressure.

The Court: You mean that the pipes or ducts

(Testimony of Mel Blanchard.)

leading from the column to the various parts of the motor were plugged up? [147]

A. They were plugged up with melted babbitt.

The Court: How could you tell that without examining it?

A. Well, you couldn't tell it until you got into it.

The Court: That is what he was asking you about.

Mr. Renfrew: No, your Honor, that isn't what I was asking him about at all.

The Court: I misunderstood you then.

Mr. Renfrew: I understood the witness to testify that there was a temporary arrangement for oiling hooked up. A. That is right.

Q. Now, the babbitt in the oil line wouldn't be the temporary arrangement. I don't know myself what the temporary arrangement was. What was it?

A. Well, it was a by-pass to get around this of the oil going through the oil columns, a by-pass from the top instead of coming up through the bottom.

Q. You mean that by-pass was arranged around that cylinder, number five, that was hung up?

A. I don't remember which cylinder it was.

Q. Well, that would be the only cylinder that wouldn't require any oil, would be number five that was hung up, wouldn't it?

A. Yes. But, if the oil column was plugged up, there wouldn't be any bearing getting any oil, only the ones behind [148] it. It would be necessary to

(Testimony of Mel Blanchard.)

put in a temporary arrangement to get the oil to the bearing.

Q. Now, when did you discover that this crankshaft was in bad shape, other than the bearing that was hung up?

A. It was after the Fairbanks-Morse man, Ted, was down there. He took the upper half of the main bearing off.

Q. Did he mike them?

A. I don't know if he miked them or not, but it showed signs of being badly scored.

Q. Do you know when that was?

A. Shortly after he came down to the boat.

Q. I mean when with relation to the month or year?

A. 1947.

Q. All right. Now, when in 1947? What month?

A. That was in April.

Q. All right. What time in April?

A. I would say in about the third week in April to be as near correct as I can.

Q. You mean sometime in——

A. Between the time I came down and the last of the month.

Q. Well, how long after you had been down there?

A. I would say about a week.

Q. About a week after you had been there?

A. Yes.

Q. And, if you came down on the 20th, why you think it would [149] be about the 27th?

A. If I came down the 20th; it might be the

(Testimony of Mel Blanchard.)

18th; it might be the 15th; I don't know, but somewhere in that vicinity.

Q. How did the Fairbanks-Morse people happen to come out there?

A. As far as I know, Mr. Owens asked them to come out there.

Q. Now, you have described the work you and your associates were doing on the boat. I thought the Fairbanks-Morse people took the job of removing that shaft?

A. That is right, they did take the job. We assisted in helping them.

Q. How many men did they have on the job?

A. Two.

Q. Am I to understand it took six men to remove that crankshaft?      A. That is right; yes.

Q. And you all worked at the same time?

A. That is right; yes.

Q. Now, you claim you had to get a ship's carpenter to cut out the bulkhead in the rear to remove the crankshaft?      A. That is right; yes.

Q. Didn't you talk to Mr. Owens about removing the stack and lifting it out like you are supposed to do on that type of vessel?

A. Mr. Owens wasn't there at that time and, as a matter of fact, it wasn't my idea. It was the Fairbanks-Morse taking it out. They were supervising this job.

Q. You never made any inquiry of Mr. Owens how to get it out?



(Testimony of Mel Blanchard.)

A. No. I figured Fairbanks-Morse knew more about it than he did.

Q. It was Fairbanks-Morse's idea take it out that way?      A. That is right.

Q. Now, in order to determine whether this crankshaft was warped in any way, they had to put it in a lathe?

A. I wouldn't say they had to put it in a lathe. But that is where they found it. Maybe they could have found it; I don't know.

Q. Well, didn't they tell you that they couldn't tell without taking it out?

A. No. The reason they took it out was to return the crankshaft and make it a smaller size and make the bearings accordingly.

Q. They told you that is what they were doing?

A. Yes. I was right there. That is what they were planning on doing, taking it out and re-turning the crankshaft.

Q. And now, did you say that when you came down from Alaska you thought you were only going to be there two or three weeks and then you were going right back to Alaska?

A. That is right; yes. That was the understanding at that time. [151]

Q. And you were going right back up to Alaska to the logging camp?      A. Yes.

Q. Was your family up there?

A. I didn't have no family.

Q. You know definitely then what you were going to do?      A. Yes.

(Testimony of Mel Blanchard.)

Q. You couldn't be mistaken about that?

A. That is what I understood at that time, yes, before I left for Seattle.

Q. Well, as I say, now, it is definite that you intended to come down there and help fix the boat up and then go back up north and stay on the boat; wasn't that your job?      A. Yes.

Q. You didn't know that there was a trip planned to San Francisco for that boat?

A. No, I never.

Q. Mr. Owens didn't tell you that?

A. Just a minute. Mr. Owens mentioned before I went down about this Frisco trip and about bringing this scow up to use in his operation, and we was coming back to Alaska to do some towing that had to be done, and then after we got the towing cleaned up and then get away, then we were going to Frisco and pick up the barge.

Q. Oh, you were coming back to Alaska first before you went [152] to pick up the barge?

A. That is right. At that time the plans were made that way.

Q. Then you don't know anything about his conversation with Captain Anderson about whether or not the boat would be safe to go to Frisco in?

A. No, I don't.

Q. Now, when you looked in the bulkhead and saw the water there after you noticed the splinters on the forefoot, that was a comparatively easy job to look in there, wasn't it?      A. Yes.

Q. How did you do it?

(Testimony of Mel Blanchard.)

A. Well, there is a steel round manhole on top, I would say about two feet in diameter, like a manhole on an ordinary street.

Q. Right on the deck? A. That is correct.

Q. And anybody could go look in there if he had a desire to see down there?

A. That is right; yes.

Q. And now, as I understood you to testify, Mr. Blanchard, that you were there when Jack Anderson came after the lifeboat? A. I was; yes.

Q. Mr. Owens wasn't there? [153] A. No.

Q. And you didn't hear the conversation between Mr. Owens and Mr. Anderson when he made arrangements to get the lifeboat?

A. I don't remember if I was present at the time or not, but Mr. Anderson told me himself when getting the lifeboat that he was to return it to Ketchikan.

Q. To Ketchikan?

A. He was to return the boat at Ketchikan on his arrival.

Q. In Ketchikan?

A. No. To the logging operation in the vicinity of Ketchikan.

Q. Where is that?

A. The Ketchikan logging operation was at Menefee Inlet at the time.

Q. Menefee Inlet? A. Yes.

Q. Did he say Menefee Inlet or did he say in the vicinity of Ketchikan?

A. Well, I don't remember whether he said in

(Testimony of Mel Blanchard.)

the vicinity of Ketchikan, but he said to his logging operation, wherever that might be.

Q. Are you positive that he said that to you?

A. Yes.

Q. And he didn't just come over and say, "I came after the lifeboat," and you said, "O.K.," and let him have it? [154]

A. No; because I understood beforehand that he was coming after it.

Q. That is why I wondered why you had to have this conversation with him about what he was going to do with it if you knew beforehand that he was coming after it. He came after it. You were just a deck hand, weren't you?

A. Sure, I knew before he was coming after it; but what arrangement him and Owens had made together, I didn't know.

Q. Did you take it upon yourself to find out?

A. Yes. After Mr. Anderson came after the boat I attempted to find out what the score was, whether he bought the boat from Mr. Owens or was going to borrow it or what.

Q. Oh, I see. Mr. Owens hadn't told you that Mr. Anderson was to have the lifeboat when he came after it?

Q. Yes; he told me that Mr. Anderson was going to borrow the lifeboat; yes.

Q. Well, now, you just got through stating that when Anderson came after it you wanted to find out what the score was, whether he bought it or what.

A. Yes; but that was sometime after that,

(Testimony of Mel Blanchard.)

though. He might have bought it in between time for all I know.

Q. I understand. Thank you. Now, you testified that you found the logbook?

A. That is right.

Q. Didn't Mr. Owens find the logbook? [155]

A. No, I don't think so. I found the logbook.

Q. Well, where did you find it? It wasn't hidden, was it?

A. No; I don't remember whether it was hidden or not. I don't believe it could be. I found it in the pilothouse; I don't remember where.

Q. Didn't you think it was odd you had to look for it?

A. Well, naturally you take a boat that hasn't been used for three or four months, people running all over the boat and coming and going; there is a special place for your logbook, but I don't remember whether it was in any special place or laying on the desk or on the floor or where it was, but I know the whole pilothouse was in a mess.

Q. When you did find it, you looked through it and then I take it you made this discovery in the logbook about the notation that the vessel had struck a rock and—

A. That is right.

Q. And you immediately got ahold of Mr. Owens, did you?

A. I informed Mr. Owens that I found that in the logbook; yes.

Q. And then he wanted to see it, did he?

(Testimony of Mel Blanchard.)

A. Yes.

Q. And he said, "That is a surprise to me," did he?

A. I don't remember what he said now, but it was more or less of a surprise to everybody.

Q. He didn't know about it before?

A. Not to my knowledge, no. [156]

Q. Well, if he was surprised——

A. Well, I don't know if it could have been a surprise or not. He might have known it. I don't know whether he did or not.

Mr. Renfrew: May I see Exhibit 18, please?

Q. I hand you Plaintiffs' Exhibit No. 18, Mr. Blanchard, and ask you if you can identify the signatures on the reverse of those checks as being your signatures?

A. Yes, they are all mine.

Q. Now, I want to call your attention to the first check here, dated April 18, 1947, and that check is made payable to Mel Blanchard, and is endorsed by you, for \$78.63 and signed by Mr. A. E. Owens of Owens Brothers. Can you tell me what that was in payment of?

A. No, I can't off hand.

Q. It was cashed at the First National Bank at Ketchikan on April 21st and cleared through Juneau on April 26th. You don't remember what that was for?           A. No.

Q. Do you know what the fare is from Juneau to Seattle?

A. No, I don't remember what it was at that

(Testimony of Mel Blanchard.)

time. Even right now I don't know what it was.

Q. The second check here is one payable to you, endorsed by you, on May 28th for three hundred dollars. Do you know what that was for? [157]

A. As far as I know it could be my monthly salary.

Q. What were you getting in wages? Didn't you say four hundred? A. Yes.

Q. And your board? A. Yes.

Q. And Social Security and Withholding Tax and everything would be figured in. That was deducted, wasn't it? A. Yes.

Q. Well, it wouldn't be for your wages then, would it?

A. Well, if you take off Income Tax from four hundred, it would be pretty close.

Q. Then on the 4th day of May you got sixty-nine dollars. Do you know what that was for?

A. No.

Q. You hadn't advanced any money up to that time on any repairs?

A. I don't remember whether it was before that or not.

Q. Well, on May 4th you got another check for \$303.74. Now, during the month of May that made \$672.74 that you got. Do you know what that was for?

A. Yes; I can explain that part, why those checks were so close together, because sometimes up in there when Mr. Owens was in the logging operation, sometimes he didn't pay up for two or

(Testimony of Mel Blanchard.)

three months. It all depended on when [158] you wanted it. If you didn't want to draw your money this month, you could the next month. That might be; I don't know.

Q. In other words this might be for back wages that you had earned before this date?

A. It could be possible, yes; but I am not sure.

Q. You don't know what this \$78.63 or \$69.00 was for?

A. No, I don't know what that was for.

Q. In the matter of these expenses that you—

Mr. Renfrew: Well, I don't need to go into that at all. As I understand it, it has been withdrawn? Has it been withdrawn?

Mr. Boochever: Yes, that has been withdrawn.

Mr. Renfrew: That is the \$1,678.00 item—\$1,678.02.

Q. Now, Mr. Blanchard, after you discovered the forefoot was damaged by looking down in the water, as I understand it the sun was shining?

A. I didn't discover the forefoot was damaged. The only thing I discovered by looking in the water, as far as I could see, I did notice there was some damage down there but I couldn't tell the extent of it.

Q. Well, you knew that before; you stated you heard Captain Anderson say so.

A. Yes, that the forefoot was slightly damaged, but you couldn't see that in the water. All I could see was just [159] below the waterline.



(Testimony of Mel Blanchard.)

Q. Well, why did you call Mr. Owens then when you knew it was damaged already?

A. Why did I call Mr. Owens for what?

Q. Well, didn't I understand you to say that you notified him in Alaska to come back down, that the forefoot was damaged?

A. I didn't notify him about the forefoot. I just said that the boat was taking water and would have to be put on drydock to determine the extent of the damage.

Q. And he came down?                    A. That is right.

Q. And then you took it over and put it on drydock?                    A. That is right.

Q. And now, how much work did the crew—that is, I am speaking of Tucker, Eaton and Jacobson and yourself—do over there when it was put on drydock?

A. During the time it was on drydock Mr. Tucker and myself overhauled the auxiliary motor.

Q. You overhauled the auxiliary motor. Was there something wrong with it, too?

A. Yes. It had to have some new bearings in it, and it was more or less of a check-over on our own part, too.

Q. In other words, you were doing odd jobs around the boat?                    A. Yes. [160]

Q. All of you were?

A. It wasn't odd jobs. We were doing what we could.

Q. Making it shipshape?

A. I might name a few things. We had to free

(Testimony of Mel Blanchard.)

up both anchor winches in the bow. They hadn't been greased for so long the salt water had frozen the various levers and controls to operate it. Also the stern towing winch, and found that it was also froze up from water corrosion, and we had to take it apart, not the whole thing, but certain parts of it, and free it up, and there is probably other things I can't think of right now.

Q. Well, in general, what you were doing was going all over the vessel, and anything that needed to be done to put it in first-class shape, you were doing?

A. Yes; but at first, though, we put our attention to the engine room and getting it ready, so when we got back to the Stikine Fish Company dock we would be ready to put the crankshaft in there, put it together.

Q. All right. But your men didn't do anything on that carpentry work on the boat, did they?

A. Well, I couldn't say too much about that, because maybe they was part of the time. I don't know.

Q. Is that the first time you were ever around a drydock yard in Seattle?

A. That is right. [161]

Q. You wouldn't say that any of your men went out and worked with the men on that drydock, fixing the keel on that boat?

A. There could have been times that they did; yes. I don't remember. There could have been

(Testimony of Mel Blanchard.)

times they asked for help, yes, like putting the keel in place.

Q. You mean it is possible, but you didn't see it?

A. We was all down there sometime or other, but there wasn't too much of it, but then we did help around there when they needed a few extra men to lift something heavy or like putting the stem in place so they could lift it up there and carry it around and something like that. Yes, we helped them out.

Q. If they needed a hand?           A. Yes.

Q. But the work was done by them?

A. Mostly, yes.

Q. Were you on the boat when she came north?

A. To Alaska?

Q. Yes.           A. I was, yes.

Q. Was that the time that the crew was discharged in Ketchikan and a new crew taken on?

Mr. Boochever: I object to that. It is irrelevant, immaterial and incompetent. [162]

The Court: Is this to prove something unrelated to the job or what?

Mr. Renfrew: Well, it may be, your Honor. I was trying to fix the time of this incident. I am not certain about it. I may be mistaken. I don't think the answer, however to that particular question could be prejudicial one way or the other.

Mr. Boochever: Well, I don't know anything about what he is leading up to, of course, but anything about the crew being discharged has nothing to do with this case, your Honor.

(Testimony of Mel Blanchard.)

The Court: Well, just because it wouldn't be prejudicial wouldn't be sufficient basis for asking the question.

Mr. Renfrew: I will withdraw the question.

Q. Well, as I understand it, Mr. Blanchard, sometime shortly after you came down from Ketchikan, which could have been any time from the 15th to the 20th of April, would that be about your guess? A. Yes.

Q. The Fairbanks-Morse people recommended the removal of the crankshaft? A. Yes.

Q. And were you there when Wilsons were doing the work on the one bearing?

A. No, I was not. [163]

Q. You weren't there when that was done?

A. No.

Q. And that was all completed before you got there?

A. Yes; as I remember, it was done before I got there.

Q. Well, you would know, wouldn't you?

A. I don't remember. I don't remember seeing anybody aboard the boat outside the Fairbanks men.

Q. When you got there the Fairbanks men had already commenced their job; is that it?

A. Well, I just got there that morning, and he more or less, he probably had been down on the boat several hours before I got there, but really hadn't accomplished anything yet.

Q. He hadn't actually started to take the crank-

(Testimony of Mel Blanchard.)

shaft out yet, but he was working around to see how to do it?

A. No. He wasn't figuring on taking the crankshaft out at that time. He was taking off the main bearing caps. I didn't pay much attention to him, but he was going through the motor, more or less of a general inspection.

Q. Was the number five cylinder hung up at that time, or number three?

A. Well, now, I couldn't say about that. I am not sure if it was hung up or what took place there.

Mr. Renfrew: That is all.

Mr. Boochever: No further questions. That is all, Mr. Blanchard. I would like to have the deposition of [164] Mr. Dent, which I believe is on file with the Court. It should be in a sealed envelope, your Honor. I have a copy. I don't assume that it will be necessary to read these, since we don't have a jury trial here, but I request that the answers to the direct interrogatories of Howard A. Dent be introduced in evidence at this time. Do you have a copy?

Mr. Renfrew: No. But if you have one, I would like to have it. Your Honor, I would like to have a moment to go over this. Could we have about three or four minutes recess?

(Whereupon, Court recessed for five minutes, reconvening as per recess, with all parties present as heretofore; whereupon the trial proceeded as follows:)

Mr. Boochever: I request that the interrogatories and answers to the interrogatories be introduced into evidence at this time. I imagine they can stay right in the file as long as they are marked as introduced.

(Whereupon, the deposition was admitted and marked Plaintiffs' Exhibit No. 22, and it remained in the official file of this cause.)

Mr. Boochever: Plaintiffs rest, your Honor.

Mr. Renfrew: Your Honor, at this time I would like to make a motion for judgment on the basis of the testimony of the plaintiff himself on direct examination. The record will disclose that the plaintiff testified that he had an [165] opportunity to buy this vessel two ways. One, he could buy the vessel for thirty thousand dollars and Mr. Anderson would fix it up; or he could buy it for twenty-five thousand dollars as it was. And the evidence discloses that he did buy the vessel as it was. And if we are to believe the testimony, which I have no doubt is true, he expended more than five thousand dollars in the repair thereof. But he purchased the vessel, your Honor, in the alternative. He had an opportunity to buy it either way, and obviously he chose the twenty-five-thousand-dollar price feeling that he could gain something by perhaps having it repaired himself, which is borne out from the fact that the repairs weren't done in the place where the vessel was at all. Now, your Honor, the same question was propounded to him on cross-examination, and he made the same answer. Now,

I submit, your Honor, on the strength of the plaintiff's testimony, that there is no ground here for any implied warranty coupled with the fact that the written instrument of agreement for sale sets forth no implied warranties and in fact states that the only thing that is stated in the contract, your Honor, as the purchase price, the terms, and Article 6: "It is further agreed that provisional delivery of said boat shall be given to the Second Parties this date, and that the Second Parties shall be responsible for said boat to the extent of the agreed purchase price after this date." There isn't a warranty or anything stated in it at all. [166]

Mr. Boochever: Your Honor, I believe that the testimony of the plaintiff, taken as a whole, indicates clearly that he bought this vessel on the representations made by the defendant and that was the basis of the purchase, and he bought it with the understanding that there were two damages to be repaired and the rest of the vessel was in first-class condition and was not leaking, and had only a slightly bruised forefoot and the one crankpin that was scored. Now, it is true he did state he bought the vessel for twenty-five thousand dollars for him to do the repairs, and he bought it with the understanding that that would be all that would be necessary in accordance with the representations made and relying on those representations, and we submit it very clearly makes out a cause of action under the uniform sales law in the Territory of Alaska and the State of Washington.

The Court: You take the view that a warranty

does not have to be included in the written contract itself?

Mr. Boochever: No, your Honor, there was nothing stated in the written contract regarding warranty one way or the other. The written contract does not state it was sold as it, where is.

Mr. Renfrew: By the same token, there is not a thing in the written contract implying any warranty whatsoever, and coupled with all of the testimony, as Mr. Boochever states, we should consider this. Your Honor will recall that this [167] witness is a man of many, many years' experience in purchasing of vessels and owned several of them for many, many years, and if he expected to have any warranty, certainly with his vast experience and having this paper arranged with his own counsel, he would have had that put right in the contract.

The Court: The question is not what he would have done, but whether it has to be in the contract. Of course, there is an implied warranty under our law.

Mr. Boochever: If I may say one other thing, your Honor. It is well accepted that parol evidence may come into evidence with regard to warranty where the contract is silent. It is only if the contract mentions the subject that then you are bound by the contract where no other evidence is acceptable. The evidence has been clear in this case that there were representations, affirmation of facts. 29-1-42 of our A.C.L.A., which constitutes express warranty as well as implied warranty under our



Code, and I think certainly there has been a cause of action made out.

The Court: I will reserve ruling on it. You may proceed. [168]

### Defendants' Case

#### GEORGE HENRY SAINDON

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Renfrew:

Q. Will you please state your full name, Mr. Saindon?      A. George Henry Saindon.

Q. What is your occupation?

A. I am a land locator.

Q. Have you ever at any time worked for Captain Anderson?      A. I have.

Q. And did you work on what is known as the TP 100?      A. I did.

Q. In what capacity?      A. As engineer.

Q. Had you had previous experience as an engineer?      A. I have.

Q. How many years?      A. Not many.

Q. When did you first sign on the TP 100?

A. In about January 3, of 1947.

Q. And how long were you with the vessel?

A. I was with them up until about the 1st of April of 1947.

Q. And during that winter from January 3rd on, where was the vessel? [169]

(Testimony of George Henry Saindon.)

A. From January 3rd until February 10, 1947, it was laying on the hook in the harbor of Seldovia, and I was on it as a watchman there, and the only man aboard. It was laying at anchor.

Q. You were the watchman. Were you living aboard the boat?

A. I was living aboard the boat continuously.

Q. Do you have any knowledge whether the batteries were in good condition or not by virtue of living on it?

A. I do have that knowledge, yes, in that I used the lights whenever necessary, and I also ran the auxiliary occasionally to keep the batteries charged up, and I used the lights for that period of time, from January 3rd until the day we left Seldovia for Seattle on February 10, 1947.

Q. And now, was there anything wrong with the boat when you started for Seattle?

A. Yes, there was.

Q. What was wrong with it?

A. They had a bad con-rod bearing in the number three, attached to the number three piston. When I first went aboard the boat, Anderson had told me prior to that time his engineer, Norman Nelson, who lived in Tacoma, who had been on the boat for quite some time as engineer, but did not want to make the Seattle trip—that is how I come to go. He told me that they had a bad bearing in number three.

Q. Was anything done before your leaving Sel-

(Testimony of George Henry Saindon.)

dovia with regard [170] to the number three piston?

A. Yes, there was. On the morning of February 10th I had wired for another engineer at Homer to meet us at the Homer dock and we would be over to pick him up on the morning of February 10th, and we made the trip over there. Jack and I and a couple or two deck hands left Seldovia and went to Homer, and that bearing did run a little warm, so, while we were waiting for the engineer to come down there to go aboard to make the Seattle trip with us, Jack and I talked it over, and I said, "It would be a good idea if we disconnected that con-rod bearing and shove the piston on up and go out on five cylinders," which we did.

Q. Then, as I understand it, the entire run to Seattle was made with that bearing——

A. That is right.

Q. That got hot going from Seldovia to Homer?

A. It wasn't hot. It wasn't what you would term hot, but it was warm, and I knew if we attempted to go to Seattle with it we might get in a storm, and we couldn't disconnect if it we were in heavy weather, and that was the safe thing to do.

Q. How much of a run is it from Seldovia to Homer?

A. Just about a two hours' run round trip.

Q. That is the distance it ran after you found the condition? [171]

A. That is right.

(Testimony of George Henry Saindon.)

Q. Did anything happen on the trip to Seattle, anything other than just the ordinary?

A. Yes, it did. We were traveling in company with the Lois Anderson power scow, and Junior Anderson was skipper of it, and in fair weather we would attach a towline on the power scow because we had a faster boat. Even with five cylinders we could travel faster than the power scow. In the Gulf there was heavy weather, and we cut loose and let him take it on his own. When we arrived at Cape Spencer, from Seldovia to Seattle, there was exceptionally bad weather, heavy seas and blinding snowstorms, and we couldn't make an entrance, so we laid out there all night, or in fact we ran back and forth or in circles until we got daylight and we could see to get in at the Spencer Light. And that following evening I was on watch. I was on from six to twelve—that is the late watch—and just shortly before I was to go off watch I got a bell from the pilothouse for full astern.

The Court: Is all this narrative leading up to the fact that you hit a log?

A. No. We hit a rock, I believe.

The Court: Then just say that you hit a rock. These other details leading up to it are unimportant.

A. All right. We hit a submerged reef or rock, as I took it [172] to be, and then we went from there to—we sustained some damage there, all right. We hit it, and I immediately then looked to see

(Testimony of George Henry Saindon.)

if she was leaking. Our pumps were ready in case of need, and there was no water coming in, and the skipper came down into the engine room and said, "We are going to Funter Bay," which was three or four miles distance from where we were at the time when we hit this sunken rock or reef. We went over in Funter Bay, and from there we proceeded to Juneau.

(Whereupon, the trial was recessed until 2:00 o'clock p.m., March 9, 1951, reconvening as per recess, with all parties present as heretofore; whereupon, the witness, George Henry Saindon, resumed the witness stand, and the direct examination by Mr. Renfrew was continued as follows:)

Q. As I recall, Mr. Saindon, your last testimony was that the vessel struck a submerged log or rock or some obstruction, and that you made some temporary examination and then proceeded into some bay.

A. Funter Bay.

Q. What occurred then?

A. Well, we dropped the hook there and laid there until daylight and then proceeded from there to Juneau.

Q. Did you make any examination?

A. As soon as we could; yes.

Q. And was the boat leaking? [173]

A. No, it wasn't.

Q. Did you have to use the pumps between there and Seattle at all?

A. No, we did not.

(Testimony of George Henry Saindon.)

Q. Did the boat leak at all between there and Seattle?      A. No, it didn't.

Q. And you made a normal trip from there on down?      A. We did.

Q. Now, did you have any trouble with the engine going down as it was running on five cylinders?      A. No, we did not.

Q. Did the boat seem to run normally all the way?      A. Yes, it did.

Q. And I believe you stated this morning that part of the time you were towing the power scow?

A. That is right.

Q. Now, did that necessitate the use of the towing with?      A. It did.

Q. And you were in court this morning and heard Mr. Blanchard, I believe, testify about they were overhauling the winch on the back end of the boat; it froze up or something?

A. I recall that.

Q. Would that be the same winch that you would have to use if you did any towing?

A. The identical winch. It was the only tow winch we had [174] aboard.

Q. And was it in good order?

A. It was in good order.

Q. And you used it on more than one occasion on the way down from Alaska?      A. We did.

Q. Now, you heard some testimony this morning about a by-pass of an oil line?      A. Yes, I did.

Q. Now, you were acting as engineer. By the

(Testimony of George Henry Saindon.)

way, have you had previous experience with diesel engines?

A. I don't have a license, but I have had experience with diesel engines.

Q. You have torn them down and put them back together?      A. That is right.

Q. Where did you do that work?

A. I did it for the Army Engineers here in Alaska.

Q. Was that just a short time previous to this year, or to 1947?

A. In 1945. 1944, 1943, 1944, 1945. I was with the Army here for five years.

Q. And you had considerable experience with diesels at that time?      A. That is right.

Mr. Boochever: I object to that as [175] leading.

Mr. Renfrew: What is leading?

Mr. Boochever: You were telling the witness what to testify; that is what is leading about it.

The Court: Well, it was leading, but——

Mr. Renfrew: I meant to say, "And did you have." Excuse me, Counsel.

Q. Will you explain, Mr. Saindon, what, if anything, was done in connection with the by-passing of the oil lines as Mr. Blanchard testified?

A. When we decided to make the trip on five cylinders rather than six as would be normal, we had to take preventive measures to keep from feeding our diesel fuel into that dead cylinder head, so

(Testimony of George Henry Saindon.)

I did put a plate in there to stop the fuel from going into the dead cylinder.

Q. Would that have any effect at all on the actual oiling of the crankshaft?

A. No. That is diesel fuel oil, diesel fuel, but it had no effect on the lubrication.

Q. Was anything done to affect the normal lubrication of the crankshaft bearings?

A. No.

Q. Could you state the number of days you were en route coming south?

A. Approximately ten days.

Q. And how about continuous running [176] hours?

A. Well, we ran about three days, is about the longest continuous running time, I believe.

Q. How many hours would that be?

A. Well, it would be seventy-two hours.

Q. And did the vessel run normally all of that time? A. It did.

Q. Now, were you by any chance present on the vessel when it was docked at Seattle when Mr. Anderson, the owner, was negotiating with anyone for the purchase of the vessel?

A. Yes, I was.

Q. Were you—did you ever see any men come aboard and go over the crankshaft and mike it?

A. Yes, they did. They came down in the engine room.

Q. And do you know whether or not that was before Mr. Owens came aboard?



(Testimony of George Henry Saindon.)

A. Yes. I had a friend down there myself and looked it over, a Diesel man.

Q. And were you there when Mr. Owens came aboard?           A. Yes, I was.

Q. Did you hear any conversation between Mr. Owens and Captain Anderson?

A. Yes, I did.

Q. Well, state what, if any, conversation you overheard between them?

A. During that time Mr. Owens was there talking with [177] Captain Jack Anderson. Anderson told him about the shaft and also about the injury to the forefoot, and he also mentioned about—although I don't think Anderson knew it would be necessary to take the shaft out—but he did mention about removing the stack and taking it out through there rather than taking it aft.

Q. You heard that part of the conversation about removing the shaft? What was that? What was the program for removal of that shaft?

A. The program as used, or as Anderson suggested?

Q. As discussed between Anderson and Owens, if you heard that conversation.

A. Well, there was nothing said about taking it out aft. It was just that it could be removed that way.

Q. What way?

A. By taking it out by removing the stack and taking it up topside. It would be amidships rather than out through the cargo hold.

(Testimony of George Henry Saindon.)

Q. That is the only actual part of the conversation that you heard then?

A. Well, no. They were talking also about the sale, well, about the price of it and not so much about how the payments would be. But I did know beforehand that Anderson had told me he had a couple buyers——

Mr. Boochever: I object to what he knew [178] beforehand.

Q. I am only interested in what you heard of the conversation now between Mr. Anderson and Mr. Owens, just what you heard; if you didn't——

A. About the price—the price, too, was spoken of, as twenty-five thousand dollars as she sits, as is, and Anderson also said that twenty-five thousand dollars as she sits, and thirty thousand dollars if he fixed it up.

Q. If Anderson fixed it up? A. Yes.

Mr. Renfrew: I think that is all. Your witness.

### Cross-Examination

By Mr. Boochever:

Q. Now, you say you worked for the Army there around diesel engines? A. Yes, I did.

Q. And when was that?

A. I worked five years, from the spring of 1940 up until late 1945.

Q. And what was your exact job?

A. General rigger foreman.

Q. In charge of what?

(Testimony of George Henry Saindon.)

A. In charge of the placing and setting of all heavy equipment, such as motors, generators, dynamos, oilers, stem rigs. [179]

Q. Where?

A. Out of Fairbanks, along the Alcan, as far south as Northway, and at Fort Richardson and on the Kenai Peninsula.

Q. Not in regard to boats, then?

A. Some was boat work, yes; and some was powerhouse installations.

Q. You have never held boat papers, though?

A. No, I haven't. I hold seaman's papers, is all, in boats—Coast and Geodetic.

Q. Now, how long had the vessel been on the hook at Seldovia prior to February 10th, Mr. Saindon?

A. That I couldn't tell you exactly, because I wasn't at Seldovia. The last time I saw her was possibly sometime in September at Homer.

Q. At Homer?           A. At Homer.

Q. And when did you go over to the vessel at Seldovia?           A. January 3rd.

Q. And it was there at Seldovia from January 3rd to February 10th?           A. That is right.

Q. Now, you said that on your way down south with the vessel that you were towing the scow; is that correct?           A. We were.

Q. Normally, when you are towing a vessel you make an entry [180] to that effect in a logbook, don't you?

A. Well, I don't know. I was in the engine

(Testimony of George Henry Saindon.)

room. That I couldn't tell you. I have never held a deck job as a deck officer.

Q. Are you sure that you were towing the scow and the scow wasn't towing you part of the way?

A. I am definitely sure of that. We towed the scow. The scow couldn't tow us.

Q. Now, where did you run into that rock? What rock was that?

A. I couldn't tell you the name of the rock, but I can tell you about where it was.

Q. Where?

A. It was three or four miles west of Funter Bay.

Q. That is Couverden Rock, isn't it?

A. That I couldn't tell you. I don't know.

Q. You ran right head-on into that rock; isn't that correct?

A. Well, I wouldn't say head-on, because I was in the engine room. I wasn't handling the courses of the ship.

Q. Now, you say the vessel didn't leak after that. Did you look in the front watertight compartment? A. I did.

Q. Yourself? A. That is right.

Q. And there was no water in there at all? [181]

A. Sure, there was water in there. There is always a little water in there.

Q. What you mean is, there was no water beyond the watertight compartment in the rest of the vessel; is that right? A. That is right.

(Testimony of George Henry Saindon.)

Q. And that is what you meant when you said it wasn't leaking?      A. That is right.

Q. Now, you said you had no trouble with the engine all the way down; is that correct, other than this one bearing that was hung up?

A. That is correct.

Q. And when you got down there the engine apparently was in good condition except for that one bearing; is that right?

A. That is right, as far as I know.

Q. Well, then you were present, you say, when Mr. Anderson talked to Mr. Owens down there?

A. That is right; I was aboard the boat.

Q. Were you there when——

A. I was in the engine room.

Q. And you were right there when——

A. I was in the engine room when they were down there inspecting the boat.

Q. And you were——

Mr. Renfrew: Just a minute. I can't hear both of you at once. Now, I think the witness should be given a chance [182] to give an answer before counsel asks another question.

Mr. Boochever: I don't mean to interrupt you.

A. That is all right.

Q. Were you right down there with them when they were talking?      A. Yes, I was.

Q. Just the three of you there?

A. That is right.

Q. And did you participate in the conversation?

A. No, I did not.

(Testimony of George Henry Saindon.)

Q. You just stood by and were listening; is that right?

A. If I was to be asked any question as to the performance of the motor, I could tell them how she performed on the way down. That was the only reason I was there.

Q. No one asked you any questions about it; is that right?

A. Yes, there were some questions, a few questions asked.

Q. What questions were asked about the performance of the motor?

A. The questions asked were if it slowed us down or if we had any other trouble with the motor, if it gave any other trouble.

Q. And what did you answer?

A. I answered that it didn't.

Q. Now, did you hear Mr. Anderson tell Mr. Owens that, aside from that one bearing, the engine was in good condition?      A. Yes, I did. [183]

Q. And did you hear him tell him that the vessel wasn't leaking?      A. Yes, I did.

Q. And did you hear him tell him that they had struck a log on the way down and slightly bruised the forefoot, but that otherwise it was in good condition?

A. I don't recall that he said "slightly." He said that he had damaged the forefoot.

Q. Well, that they had hit a log on the way down?

(Testimony of George Henry Saindon.)

A. I don't know about the log deal. He couldn't have said that because, to me, it was no log.

Q. Well, I am not asking what it could have been. Was there anything else said at that conversation?

A. Only about the price.

Q. And that is all?

A. That is as far as I know; yes.

Mr. Boochever: That is all.

### Redirect Examination

By Mr. Renfrew:

Q. Just a moment, Mr. Saindon. I want to ask one or two questions. Did I understand you to say there was always water in this bulkhead that is right behind the stem or the forefoot?

A. I won't say that there is always water. I did make a [184] statement that there would always be water in there, because it is a wood boat and there is always a rack to it when she springs.

Q. You did examine that after this collision with this submerged object?

A. I didn't that night. We went out around the bow with a dory and took a look at it, and if there was any leakage of any amount it would show back of the bulkhead, even it would show back of the bulkhead under the auxiliary motor.

Q. And you saw absolutely no evidence of that?

A. That is right.

Q. And did you check it periodically from then on to see?

A. We did.

(Testimony of George Henry Saindon.)

Q. And you never pumped it once?

A. Yes, we pumped it.

Q. When did you pump it?

A. We pumped it at Ketchikan, not because of a leak, but because you pump your bilge occasionally, anyway.

Q. After you pumped it at Ketchikan, did you pump it again?      A. No.

Q. Did you get any appreciable amount of water out of it, any more than you ordinarily get from a bilge?      A. No.

Q. In Ketchikan?

A. That is right. And we never pumped it in Seattle while [185] she laid there.

Q. Now, you mentioned that in your opinion that you hit a rock. Is that what Captain Anderson said, or is that what you thought?

A. That is what I thought.

Q. Did he stop the vessel and back it up?

A. That is right.

Q. Is that the procedure when you hit anything in the sea?

A. Either back up or else you continue going ahead. If it is a nice shelf and you are badly hurt, you can shove your nose up on it and maybe save you from sinking, and then you have got to hang on rather than back away. But it was at night, and I wasn't on deck, of course.

Mr. Renfrew: That is all.



(Testimony of George Henry Saindon.)

Recross-Examination

By Mr. Boochever:

Q. A few more questions.           A. OK.

Q. Now, when you were pumping this out at Ketchikan, you didn't pump it dry, of course?

A. Naturally not.

Q. Now, when you went into the rock and, you said, you backed off, could you feel it come off?

A. Could I feel it come off? [186]

Q. Yes.

A. No, I couldn't feel it come off, but I knew we were afloat. I could feel the movement of the ship.

Q. Now, when you hit that, it was quite a definite collision there, wasn't there? You came to a full stop?           A. That is right.

Q. Now, in regard to—when you got down to Ketchikan, how long did you stay with the boat?

A. When we got to Ketchikan?

Q. When you got to Seattle, I mean?

A. I was on the boat up until about the latter part of March.

Q. And where was it that you took the boat up on drydock?

A. We didn't take it up on drydock.

Q. You don't remember that?

A. It isn't that I don't remember, but all the time that I was aboard the boat she never went on drydock.

Mr. Boochever: That is all.

Mr. Renfrew: That is all, Mr. Saindon. Call Mr. Owens for a question or two, please.

ALMON E. OWENS

called as a witness on behalf of the defendants, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Renfrew:

Q. Mr. Owens, so we get one matter straight here—did Captain [187] Anderson tell you this vessel hit a log or a rock?

A. He told me it hit a log.

Q. Definitely? A. Definitely.

Q. It couldn't possibly be any rock?

A. He didn't mention a rock at all. He said he hit a log and bruised the forefoot slightly.

Q. And was anyone there when he told you that?

A. Mr. Dent was with me when he told me once.

Mr. Renfrew: May I have the deposition of Mr. Dent, please?

Q. Now, if Mr. Dent was there, I wonder if you could know why in answer to this Mr. Dent would make this reply in his deposition referring to a conversation that took place between you and Mr. Anderson in his presence: "The conversation took place on the boat mentioned and as they were interested in disposing of the boat and Owens needed it for his logging business he was endeavoring to buy the boat and in going over it he was advised that it had just returned from Alaska and was in good shape except that they had hit a log or rock

(Testimony of Almon E. Owens.)

and that it might need some minor repairs there and while the engine did not run Anderson advised us that with the exception of one bearing the engine was in first class shape and that for the sum of not to exceed \$5,000.00 the boat could be put in [188] first class condition." Why do you suppose Mr. Dent got the idea that it might have hit a rock?

Mr. Boochever: I object to that as calling for a supposition of what another man believes. The deposition speaks for itself.

The Court: I should think it would be difficult for him to tell why somebody else supposed it was a rock.

Q. Well, Mr. Dent was there, as you stated, when that conversation took place, wasn't he?

A. Mr. Dent was on the boat with me and he talked with Mr. Anderson personally.

Q. Didn't you just answer to my question before I read that deposition that Mr. Dent was there when you had this conversation with Captain Anderson about hitting this log?

A. Without a doubt I talked with Mr. Anderson, but also Mr. Dent did the same thing.

Q. Well, now your explanation is that he may have told "rock" to Mr. Dent when you weren't listening, but to you he said "log"?

A. No. I was there all the time. I heard what was said.

Mr. Renfrew: That is all.

(Testimony of Almon E. Owens.)

Cross-Examination

By Mr. Boochever:

Q. Mr. Owens, by that deposition there does that mean, to [189] you does that mean according to Mr. Dent that Mr. Anderson didn't say that it hit a log on the way down?

Mr. Renfrew: Now, if you want argument, your Honor—I object to that.

Mr. Boochever: That is the same kind of question counsel was asking, I admit. I want a second here to see if I can locate a document. I am sorry to take up your Honor's time on this but I want to find this exhibit in here.

Mr. Renfrew: I can't understand why counsel would cross-examine on exhibits.

The Court: Didn't you call him as your own witness?

Mr. Renfrew: Yes, I did.

The Court: Then this is cross-examination.

Mr. Renfrew: But it is limited to the questions I asked him.

The Court: Well, what question are you going to ask?

Mr. Boochever: I don't know why counsel is assuming that I am going to ask about something else.

Mr. Renfrew: I was wondering what he was looking for that it takes so long.

Q. I show you a letter which is unsigned and shows on it that it is a carbon copy, and ask you

(Testimony of Almon E. Owens.)

if you have ever seen the original of that letter, original signed copy of it?

A. Yes, I have. [190]

Q. What is that a copy of?

A. A copy of a letter to Mr. Orville Mills.

Q. From whom?           A. From Mr. Dent.

Q. And did you recognize the original signature on that?           A. I received the original letter.

Q. With Mr. Dent's signature on it?

A. Yes.

Q. And what was the date of that letter?

A. March 12, 1949.

Q. Now, I am going to ask, do you have the original signed copy of the letter?

A. Not with me.

Mr. Boochever: I am going to ask to introduce this into evidence in regard to cross-examination.

Mr. Renfrew: Your Honor, conceivably it would be nothing but self-serving and hearsay, a letter from Mr. Dent to the witness.

The Court: To which witness?

Mr. Renfrew: The witness on the witness stand.

Mr. Boochever: To Mr. Mills, his attorney.

Mr. Renfrew: Or Mr. Mills, his attorney. A letter from Mr. Dent to this man's attorney, how could that be anything but a self-serving declaration and hearsay.

Mr. Boochever: Well, obviously it is not [191] self-serving because it isn't Mr. Owens or Mr. Mills that has written the letter. It is from Mr. Dent and it is in regard to the allegation as to what was

(Testimony of Almon E. Owens.)

heard and it was written at a time earlier than the deposition.

Mr. Renfrew: Are you trying to impeach your own witness' deposition?

Mr. Boochever: No, I am not. I am trying to clarify it. He said that Mr. Anderson said "a log or a rock." I am trying to clarify it by an earlier statement.

Mr. Renfrew: Well, your Honor, I object to any further discussion on this matter even by inference from counsel that he could prove it. He doesn't even have a signed letter here. He has a typewritten sheet which purports to be typed from a letter which went from Mr. Dent, as he says, to this man's counsel, and this man says, "Yes, I saw that letter."

Mr. Boochever: Now, we have copies. He had a signed copy.

The Court: The purpose is to show, as I understand it, that Dent made a statement consistent with this witness' testimony?

Mr. Boochever: That is correct, your Honor; at an earlier date than the deposition, and the deposition, I maintain, is not inconsistent. It just gives an alternative as to what the conversation was, and this explains at an earlier [192] date, shows that it is consistent with Mr. Owens' testimony.

The Court: Well, of course, the rule is that before you can corroborate a witness' testimony by showing the statements made prior to the suit consistent with the testimony, you have got to show

(Testimony of Almon E. Owens.)

that the witness'—and that would be Dent—credibility had been attacked in that respect. Have we a situation like that here? I don't think we have.

Mr. Boochever: Well, we have a situation where Mr. Dent's credibility is attacked to an extent, either his or Mr. Owens', one or the other. It could be regarded as either way. As it is, Mr. Dent stated that it was "a log or a rock." Now, of course I maintain that it isn't really inconsistent, but that was the purpose of calling Mr. Owens on the stand, to bring out that inconsistency which isn't attacked at least indirectly on the credibility of Mr. Dent. It could be regarded as either the credibility of Mr. Dent or Mr. Owens, and I think this clarifies it and explains it.

Mr. Renfrew: It seems pretty far fetched to me, your Honor, to claim that I am attacking the credibility of a deposition of a witness who is sworn under oath and gives testimony here. I am merely showing the inconsistency between that testimony which the plaintiff has introduced and the testimony of the plaintiff.

Mr. Boochever: If showing inconsistency isn't attacking credibility, then I don't know what it is. It certainly is showing that one or the other is either mistaken or [193] unreliable on his testimony.

The Court: Well, it seems to me that the rule further contemplates that the corroborating testimony consisting of prior consistent statements would have to be given by the witness whose credi-

(Testimony of Almon E. Owens.)

bility is attacked, would it not? For instance, assuming that it is Dent's credibility that has been attacked here and you want to rehabilitate him by showing that at a time that he could have no motive therefor he made statements consistent with his testimony, it would have to be Dent that would have to get on the stand and testify to those statements, wouldn't it?

Mr. Boochever: No, I don't believe that that would be correct, your Honor, because suppose, for instance, that Dent—we are assuming now that his credibility is being attacked here, and he submitted a deposition, and his testimony is a later fabrication. Well, now, a statement made by Dent immediately after the collision to the same effect could come into evidence; a statement made to Mr. Owens or anyone else could come into evidence and naturally is an exception to the hearsay rule to substantiate credibility in that instance, and Mr. Dent wouldn't be the one to testify to a prior statement even if he could. That is the rule on the exception.

The Court: You mean, if you could produce somebody else who heard it?

Mr. Boochever: That is right. Now, here I have got [194] a prior statement of Mr. Dent's on this matter to clarify it.

Mr. Renfrew: I take issue with counsel in that case. He has no prior statement, and it isn't the best evidence, and I take issue with the very premise of the argument that I am attacking the credibility of Mr. Dent. I submit that I am not attacking Mr.



(Testimony of Almon E. Owens.)

Dent's credibility at all. I am trying to refresh this man's memory as to what was said at that time and for no other purpose.

Mr. Boochever: Well, of counsel can state what his purpose is, and of course he can state it any way he wants, but the fact is that he is trying to show an inconsistency between the two, which may be regarded as an attack on the credibility of either one or both.

The Court: Well, in view of his statement he certainly is precluded now from making any attack on the credibility of Dent in that particular.

Mr. Boochever: Well, I mean he can't take his choice on saying that they are inconsistent, "I am attacking Mr. Owens' credibility," when his actions are what counts, your Honor, and he has attacked the credibilty of either or both.

The Court: Well, but my point is, if he is precluded from attacking the credibilty of Dent in his argument, then what purpose would be served by allowing this to go in?

Mr. Boochever: Because, your Honor, in my opinion [195] he is attacking the credibilty of either one of these men, and we are entitled to show which is correct and to show the prior statement on the point to prove it.

The Court: Now, that is a copy of a letter written by Dent?

Mr. Boochever: That is right.

The Court: Well, where is the original?

Mr. Boochever: The original, he says he hasn't

(Testimony of Almon E. Owens.)

got, and I don't believe I have a signed copy in my file, just this unsigned copy. I don't know where the original is.

The Court: Well, you mean it is here somewhere but you don't know where it is?

Mr. Boochever: No. I don't believe I have it, your Honor, and I don't know whether anyone does; possibly Mr. Mills might. He sent me all of his files supposedly, and I don't know why the original isn't here. If your Honor wants, I could request a continuance to get this since we are going to have a continuance at the end of the trial anyway. I could get the original copy from Mr. Mills, if he has it, but I don't know where it is now. Mr. Owens received a copy and he doesn't know where it is.

Mr. Renfrew: The mere production of something, your Honor, doesn't prove that it is the original. Just a letter signed by someone who calls himself Dent doesn't mean a thing. It would have to be identified. [196]

Mr. Boochever: Well, possibly we could produce that with Mr. Mills' testimony.

Mr. Renfrew: Now, your Honor, the only purpose for introduction of that kind of evidence is to explain the statement made by Mr. Dent, their witness. Now, that is the only reason for it. It can't be any other. It can't bolster or lower this man's testimony one bit. He states emphatically that Captain Anderson told him that he hit a log and nothing else. Now, that is his testimony. Now, Mr. Dent

(Testimony of Almon E. Owens.)

comes in here with a sworn statement and deposition taken by the plaintiff in the action and he said Captain Anderson said that he either hit a log or a rock; he didn't know which. Now, my point is that it doesn't make any difference what Mr. Dent said at some other time. It can't do anything but clarify Mr. Dent's statement. It doesn't do a thing to affect his testimony because he has sworn that Anderson didn't say anything but that they hit a log. Period. Now, that is all there is to it.

Mr. Boochever: Your Honor, the purpose of bringing this man on the stand was either to impeach himself or to impeach Mr. Dent or both of them, to show an inconsistency, and he was asked specifically—the question that was asked him was whether Mr. Dent was present with him and whether that was the only representation in the presence of both of them as to the striking of this log or rock. Mr. Owens testified that [197] it was a rock that was stricken. Well, now, that is according to counsel's theory, but I don't agree with his theory, I admit, but according to his theory it is inconsistent with Mr. Dent's prior testimony, and it goes to impeach Mr. Dent's testimony, and a showing of a prior statement of Mr. Dent to clarify it could come in.

The Court: Well, it isn't clear yet to me; what was it that Dent testified to in his deposition?

Mr. Boochever: He stated that Mr. Anderson stated that he hit a log or a rock on the way down, which could be interpreted to mean that those were the exact words or it could be interpreted to mean

(Testimony of Almon E. Owens.)

that he hit a log or he may have said he hit a rock; Mr. Dent wasn't certain.

The Court: And this is for the purpose of showing that at an earlier time he made the same statement?

Mr. Boochever: No. The earlier time he stated definitely that it was a log.

The Court: That Dent said that?

Mr. Boochever: Yes.

Mr. Renfrew: How are you going to show that? Now we are down to where you might as well show the Court the letter now and take the stand and swear that you know that that is the letter from Mr. Dent.

Mr. Boochever: Well, I have already had the witness swear that he knows that it is a true copy of a letter from [198] Mr. Dent.

The Court: Well, but from what you say it would appear that Dent testified in his deposition that he was told by one of the defendants that the boat hit a log or rock?

Mr. Boochever: Yes, your Honor.

The Court: And this would put into evidence the statement of his on a previous occasion that what the defendant said was a rock?

Mr. Boochever: Was a log, your Honor.

The Court: Well, I thought it was for the purpose of corroborating the witness Dent's testimony, but this would seem to do nothing but show that at an earlier time he made a——

(Testimony of Almon E. Owens.)

Mr. Renfrew: A different statement.

The Court: Yes.

Mr. Renfrew: And now he is trying to impeach his own witness.

Mr. Boochever: I am not doing that, your Honor. I am trying to accredit him. He said at this later date that Mr. Anderson said a log or a rock. In other words, he couldn't remember which, and at the earlier date he stated a log, and that is what I am trying to do, to establish it, which is consistent with what Mr. Owens has testified.

The Court: Well, it wouldn't be for the purpose then of corroborating Dent, but of corroborating the witness [199] on the stand?

Mr. Boochever: Well, it would be accrediting Dent's testimony, explaining it.

Mr. Renfrew: Well, counsel takes the opinion apparently, your Honor, that the witness Dent here didn't know whether Anderson said log or rock, and I read this entirely different. The conversation as this reads, your Honor, it says: "The conversation took place on the boat mentioned and as they were interested in disposing of the boat and Owens needed it for his logging business he was endeavoring to buy the boat and in going over it he was advised that it had just returned from Alaska and was in good shape except that they had hit a log or rock and that it might need some minor repairs." Now, the word intimates that Anderson said, "We hit something. I don't know what we hit—a log or a rock—coming down, and the forefoot is damaged

(Testimony of Almon E. Owens.)

and we need some repair.” Now, apparently counsel takes the position that what this witness meant to say was, “Anderson said, ‘We hit a log,’ or else Anderson said, ‘We hit a rock’; I don’t know which he said.” Well, I don’t interpret this that way at all, and that is a matter of argument.

Mr. Boochever: Well, that is why I want to accredit Mr. Dent’s testimony with his earlier statement to show which is correct and what the earlier facts were in the matter.

The Court: Well, do you mean on the theory that [200] being earlier in time it would be presumed that his recollection would be clearer on it?

Mr. Boochever: That is right, your Honor.

Mr. Renfrew: Before your Honor rules, if you are contemplating at all letting this go into evidence, I would like to have an express statement from the Court under what theory a written piece of paper addressed to someone in typewriting with a signature typed thereon can be identified by a third person as a true copy of an original not even addressed to him, and how it could be competent evidence in any kind of proceeding in the world. I can’t think of a situation.

The Court: Well, would it differ from an oral statement that is attempted to be introduced to corroborate a witness?

Mr. Renfrew: I beg your pardon, sir?

The Court: How would it differ from an oral statement? Suppose that——

(Testimony of Almon E. Owens.)

Mr. Renfrew: It isn't any statement at all. It is absolutely nothing. It isn't anything.

The Court: Why not?

Mr. Renfrew: Your Honor, how can it be anything? It is a typed piece of paper. Supposing I went out in the other room and typed something up and brought it in here and offered it in evidence——

The Court: You mean it hasn't been [201] authenticated yet by this witness?

Mr. Renfrew: Certainly not; it couldn't be authenticated with him; it isn't written by him, or it isn't addressed to him.

The Court: By whom is it signed?

Mr. Boochever: It is a typewritten letter signed by H. A. Dent in typewriting on this copy, but the witness has stated he has seen the original signed copy. According to counsel's argument you could never introduce secondary evidence, and that is almost elementary that you can introduce secondary evidence when you can't produce the original to testify on it.

Mr. Renfrew: Well, your Honor, certainly you can introduce secondary evidence. I am not quite so naive as that, counselor. But you can't introduce evidence addressed to a third person by a fictitious first person and then ask the witness has he ever seen the original thereof. He says, "Why, yes, I have seen the original. I remember seeing the original," and so, well, now this must be a copy of it. If he saw the original and he knows the content of it, have him write it in his own handwriting. If he

(Testimony of Almon E. Owens.)

can produce the copy of that in his own handwriting, I will submit to its admission.

Mr. Boochever: I don't follow you. Submit what copy of what?

Mr. Renfrew: He doesn't know the content of that [202] letter.

Mr. Boochever: He has looked at it and he knows the content of it.

Mr. Renfrew: That is the only reason he knows it, is what he has seen on the witness stand. The letter wasn't addressed to him.

Mr. Boochever: I don't want to engage in an argument with you, Mr. Renfrew, but he stated that he recognized the letter, and that he received a carbon copy as indicated on it, that was signed; and an original of it, he doesn't have it.

Mr. Renfrew: If he received a carbon copy, your Honor, that wouldn't be competent unless it was signed. I might make up a paper and send it to him as a carbon copy.

Mr. Boochever: Your Honor, I will do this in order to get this thing moving. If counsel will agree to taking a further deposition of Mr. Dent and questioning him about this matter, I will agree to that and waive my request at this time to introduce this letter.

The Court: Well, did he say that—it isn't clear to me whether the witness said that he saw the original or merely a carbon copy.

Q. Mr. Owens, will you look at this letter again,



(Testimony of Almon E. Owens.)

please? Now, did you see the original of that letter at any time?

A. I am not positive about that. I received a copy signed by Mr. Dent. [203]

Q. That is exactly—that was identical with that letter?

A. That is right.

The Court: Well, I think that the letter would be admissible just the same as an oral statement except that the rule that permits the corroboration or rehabilitation of a witness whose credibility has been attacked by introducing a prior consistent statement is limited to a situation where there has not been merely an attack of this kind but where there has been a serious attack on his credibility, and I don't think there has been any attack of that kind here. In other words, the rule cannot be invoked every time that a witness is contradicted or some inconsistency may develop, so I think that on that ground it would have to be excluded. Upon reflection I recall that it is only where the credibility of a witness is seriously attacked that evidence of prior consistent statements may be received, and I don't think that there is that kind of an attack on the witness Dent.

Mr. Boochever: Well, your Honor, I do think that on one of the later points, I do think that this is one of the material representations in the case, one of the important points in the case, and that on that score it is important that the credibility be shown and the prior statement be introduced in evidence. It is one of the major points and one of the

(Testimony of Almon E. Owens.)

misrepresentations that we rely on, so that it isn't as though it were an immaterial point. [204]

The Court: Well, it isn't immaterial except, as I say, I don't know of anything that would take it out of the rule because it happens to be important. It seems to me that it would have to be more of an attack on the credibility of the witness than merely showing inconsistency of what he said on one occasion and another.

Mr. Boochever: Very well, your Honor. For the record may I make an offer of proof in regard to this letter?

The Court: Yes.

Mr. Boochever: I think the letter for identification may be introduced, too, so as to show what its content was, and by this letter I wish to show that at a prior time to his deposition Mr. Dent stated definitely that Mr. Anderson told Mr. Owens in Mr. Dent's presence that the hull only needed a small repair to the bow where they had hit a log on the way down, and that that statement goes to explain this later statement which has been brought into question by the testimony in regard to Mr. Owens, and it is for that reason that I request that this letter be introduced into evidence.

The Court: Well, of course there is another respect in which the offer of proof fails to comply with the rule, and that is it doesn't show a prior consistent statement but it shows a prior different statement. Now, if the situation, for instance, were this: If the witness, Dent, had been on the stand

(Testimony of Almon E. Owens.)

here and testified in the way he did by deposition and [205] then went back on the stand and corrected his testimony to say that he recalls now that all that was said was that the boat had struck a log, then, if there was an attack made on his credibility in any way, a prior consistent statement, at a time when it was presumed that his recollection was better, would be admissible, but I may be in error in assuming that the attack here on the credibility of the witness, Dent, is not as serious as it must be to warrant introduction of testimony of that kind, but on the other hand the other obstacle, as I see it, to its introduction is that it is not a prior consistent but a prior inconsistent statement.

Mr. Boochever: Your Honor, I also request at this time that while the case is being continued to receive the deposition of Mr. Mills and Mr. Dawe, that we be allowed to secure the deposition of Mr. Dent in rebuttal.

The Court: That may be done.

Mr. Boochever: That is all, Mr. Owens.

Mr. Renfrew: That is all.

### GERALD MASON OAKSMITH

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Renfrew:

Q. Will you please state your full name?

A. Gerald Mason Oaksmith. [206]

(Testimony of Gerald Mason Oaksmith.)

Q. Where do you reside?

A. I reside in Seattle.

Q. And what is your occupation?

A. My occupation at present is superintendent of the Scow Bay Canning Company at Petersburg, Alaska.

Q. Now, do you own any boats?

A. Right now I have an interest in and own four boats.

Q. Have you had any experience with the type of vessel concerned here, this TP 100?

A. These TP 100s, I have had experience from the time the boats were designed by the Army Engineers in 1941.

Q. What experience have you had?

A. From 1942 to 1944 I was with the Army Transport in Seattle, in charge of repairs and manning and supplies in the small boats and harbor division.

Q. And do you know something of the construction of these TP boats?      A. Yes, I do.

Q. Do you have any idea what they cost new; what they cost the Government?

A. Approximately two hundred and fifty thousand dollars.

Q. Do you know when the first ones were made?

A. The first one came out in the——

Mr. Boochever: Your Honor, I object to this. I don't think it is relevant when they first came out, and I [207] also object to the last question and ob-

(Testimony of Gerald Mason Oaksmith.)

ject regarding the cost and move that the last question be stricken as totally immaterial.

The Court: What do you claim for that?

Mr. Renfrew: Well, I think, your Honor, that both of them are material in the first instance, and I would like to show that the boats were built within a comparatively short time. The first one was built just a few years prior to 1947, and this man has that knowledge, and that these boats were built at a cost of several hundred thousand dollars and, if a person, by inference then, purchased one for twenty-five or thirty thousand dollars, he couldn't expect to have it put in first class shape, such as recoppering the bottom and all of the necessary work that was done on this vessel, at that price. It is clear out of the question.

The Court: Well, if this concerns the reasonable value of the sale price of the boat or if the plaintiff didn't predicate his case upon express warranty, I think your point would be well taken, but since the case is predicated on breach of warranties then it makes no difference what the boat was worth new, how old or how new it was.

Mr. Renfrew: Well, it makes this difference, your Honor, not from what the boat was worth, but to show what reasonable wear and tear would be on a boat from a certain length of time to a certain length of time. I can show that [208] this wasn't an old vessel.

The Court: Well, but they are not claiming here that the cost of repairs was unreasonable. They are

(Testimony of Gerald Mason Oaksmith.)

complaining that the cost of repairs was misrepresented.

Mr. Renfrew: Maybe I can claim that the cost of the repairs was unreasonable, your Honor. I haven't put on my case yet.

The Court: Have you pleaded anything like that?

Mr. Renfrew: I have denied the cost of their repairs.

The Court: Well, you want to show that the cost of repairs was——

Mr. Renfrew: Not only that the cost was clear out of sight, but that there was an agreement to fix the boat for less than five thousand dollars, and that Mr. Anderson even said, "I will fix the boat up if you want to pay thirty thousand dollars," and he had a basis for saying that.

The Court: Well, all right then. You want to show now that the cost that was incurred in repairing the boat was reasonable or unreasonable; which?

Mr. Renfrew: The cost of these people's spending in repairing the boat was absolutely unreasonable. I certainly am going to show that. They took the crankshaft out backwards and had everybody working on it from Ketchikan to Yakima.

The Court: That might be all right if it wasn't for [209] the fact, as I say, of these warranties.

Mr. Renfrew: Then, if the warranty is in question, what did your Honor leave any of the other testimony in at all for? I move to dismiss the case in favor of the defendant here on the ground that

(Testimony of Gerald Mason Oaksmith.)

there isn't any question of warranty because the man testified himself that he could buy it as is for twenty-five thousand, or thirty thousand fixed. But your Honor allowed all this testimony in about the butcher and the cook and the baker and the candlestick maker working on this thing, three and four and five at a time. Now, I have got a right to show that those repairs could have been done for an awful lot less and prove that Jack Anderson could have had the repairs done for five thousand dollars.

The Court: That can be done without showing the price new of the boat, can't it? And furthermore, you complain that this evidence of these various people has gone in, but you didn't object to it.

Mr. Renfrew: I objected to every single one of the items as they came along here, but your Honor let them in. The record will show that.

The Court: You intimated a moment ago that you objected to the witnesses themselves, to their testimony generally. Now, you may have objected to some of the items, that is true, but you didn't object to so many of the items that it would be correct to say that you objected to all the [210] testimony of all these witnesses.

Mr. Renfrew: I haven't said that, your Honor, at all.

The Court: It sounded like it.

Mr. Renfrew: Well, your Honor knows that I didn't do that.

The Court: Well, the unreasonable cost of repairs, I don't see any necessary relation between

(Testimony of Gerald Mason Oaksmith.)

the unreasonable cost of repairs and the initial cost of the boat. Now, it may be that the initial cost of the boat might be relevant on some other issue.

Mr. Renfrew: Well, I don't know what we are arguing about that for. He said the boat cost two hundred and fifty thousand dollars. Now, if your Honor didn't want to hear him, let's strike it. I don't care. It doesn't make any difference to me at all. The next question that I asked him though was the one counsel objected to.

Mr. Boochever: I moved to strike it as irrelevant.

Mr. Renfrew: If the Court wants to strike it, strike it. This is a trial before the Court. I don't care.

The Court: Well, the Court will let it stand because it has some tendency to show the type of boat it was, and I think that is relevant.

Mr. Renfrew: What was the next question I asked?

Mr. Boochever: When all of these boats were built. [211]

Mr. Boochever: And I make objection to that as irrelevant.

The Court: Objection sustained.

Mr. Renfrew: Now, your Honor, I wish to make an offer of proof. I wish to show by this witness that this boat, which cost two hundred and fifty thousand dollars at a minimum, was built a very, very few years, within from 1943 the first one was built, and that this vessel was purchased in 1947,



(Testimony of Gerald Mason Oaksmith.)

and that the usual wear and tear on batteries, winch, and all these other things, the starting generators, starting motors, and all of the other things that have been enumerated here by Mr. Blanchard, couldn't possibly have occurred on a vessel given hard care or given extreme usage during that period of time.

The Court: Well, but if your question had been, when was this boat built, the Court would of course permit it, but when you say, when was this type of boat built, why it wouldn't necessarily prove that this particular boat was built when the first of that type was built, would it?

Mr. Renfrew: No, your Honor, but it would show that this boat wasn't built before the first one was built, and I am willing to take when the first one was built as a starting point.

The Court: Objection overruled.

Mr. Renfrew: You still won't allow that question? [212]

The Court: I said, objection overruled.

Mr. Renfrew: All right.

Q. Now, when was the first boat built like this?

A. In the Spring of 1944 they were completed, the first one.

Q. In the Spring of 1944?

A. That is right.

Q. Now, how long have you been acquainted with Jack Anderson, Mr. Oaksmith?

A. Oh, some six or seven years.

Q. Do you know Mr. Owens? A. Yes, sir.

(Testimony of Gerald Mason Oaksmith.)

Q. Were you acquainted with this TP boat 100?

A. Yes, sir.

Q. And did you ever talk to Mr. Owens about the TP 100?

A. Yes, sir.

Q. When?

A. In the Spring of 1947.

Q. Do you know the approximate month?

A. Approximately in the month of March.

Q. And where did you have this conversation with him?

A. In my automobile in the front of Pan American Airways Office on Fourth Avenue, in Seattle, Washington.

Q. Now, will you state what the conversation was and who was present and the approximate time?

A. I had driven my younger brother, Stanley Oaksmith, from [213] Ketchikan, to Pan American Airways Office.

The Court: Well, you don't have to say what you did; just say where this conversation was.

A. My brother went into Pan American Airways Office, and he came out with Mr. Owens. He introduced me to Mr. Owens as a logger from Ketchikan, a customer of his Ketchikan Airways Flying Company, who was looking for a tugboat. Mr. Owens stated that he had been looking at one TP boat in Seattle, and was contemplating purchasing it. This TP boat was the TP 100 owned by Jack Anderson. I told Mr. Owens that this tug had all the indications of having a bent crankshaft and that before he bought it he should have it very carefully surveyed because of this possible fault. I told him that

(Testimony of Gerald Mason Oaksmith.)

the tug had burned out a bearing when the Army declared it surplus at Seward. She was tied up with a burned out bearing, and that Jack Anderson bought her knowing she had a burned out bearing and put bearings in after that. I further told Mr. Owens that Mr. A. W. Dawe, who was sitting in the back seat of my automobile, who was from New Westminster, B. C., and had two tugs on tap of similar design which he wanted to sell. Mr. Owens and Mr. Dawe talked for a few minutes, and then Mr. Owens said he was staying at the New Washington Hotel and, if Mr. Dawe was going to stay in town that night, he would make reservations for him at the New Washington Hotel so [214] he could stay at the same hotel. They both decided then to do that and meet later, and what they said from there, I don't know. But I told Mr. Owens that the only possible way of telling whether this crankshaft was bent was to put it in a lathe and, that to spend twenty-five thousand dollars for this tug, when he could buy another tug of similar design for thirty-five thousand dollars without a bum crankshaft, was throwing money away.

Q. Now, did you ever have a conversation with him after that?

A. The second time that I saw Mr. Owens prior to my coming to Anchorage on Tuesday or Wednesday, the second time I saw Mr. Owens was at 740 Westlake North, the Stikine Machine Works Dock in Seattle. At that time Mr. Owens had purchased the TP 100 from Mr. Anderson. I asked him at the

(Testimony of Gerald Mason Oaksmith.)

time why, after my telling him of the possible damaged crankshaft, had he bought this vessel. Mr. Owens stated that the terms that Jack Anderson gave him on the tug were the deciding factor in his purchase of that tug and that he didn't have the necessary financing to spend thirty-five or forty thousand dollars on another tug and have to pay cash for it.

Q. What was happening on the TP 100 when you saw it at that dock?

A. At that time there was very little activity.

Q. Do you know the date you talked to him there? [215]

A. No, sir, I don't.

Q. And you had considerable experience in the sale and purchasing of vessels?

A. Yes, sir.

Q. Over a period of several years?

A. Over a period of the last six years.

Q. What is the customary way of having a vessel inspected if you are going to buy it or sell it?

A. The customary procedure in purchasing a vessel is to have——

Mr. Boochever: Now, I object to the customary procedure. It is irrelevant, incompetent and immaterial.

The Court: Do you claim anything for it?

Mr. Renfrew: I maintain, your Honor, that a man who has been in the business for twenty, thirty or forty years, such as the plaintiff in this action, should have followed the customary procedure if it is customary to have a surveyor survey the boat.

(Testimony of Gerald Mason Oaksmith.)

The Court: Nothing of this kind would be admissible unless it was the general custom.

Mr. Renfrew: That is what I asked him, the general custom, the customary procedure.

The Court: That wouldn't ask for a general custom first. You would have to show that there was a general custom in the industry.

Mr. Renfrew: Well, I will revamp the question, your [216] Honor.

Q. Is there a general custom in the industry for the purchase of boats to have all vessels of the size of the TP 100 surveyed before a purchaser buys it?

Mr. Boochever: Now, I object to that, even assuming there is a general practice, your Honor. He is trying to say that Mr. Owens was negligent in the matter of purchasing it. That is what it amounts to. It is totally irrelevant. He had a right to rely on representations made to him and he didn't have to buy according to a general custom and have that certain customary made inspection done. That has nothing to do with this case.

The Court: Objection sustained.

Q. Did you have any occasion to see the crankshaft removed from the TP 100?

A. I don't believe I saw them take it out of the boat; no, sir. I saw them trying to get it out of the boat, but I didn't see them take it out.

Q. Well, from your experience with these TP 100s, is there a proper and an improper way of taking out a crankshaft?

A. I don't believe there is any advertised proper

(Testimony of Gerald Mason Oaksmith.)

way of taking the crankshaft out, unless the owner of the vessel knows the way the vessels were designed and how they were designed to be taken out.

Q. Well, what way are they designed to be taken out? That is [217] what I want to know, is, was there a way to take them out?

A. When the Army Engineers designed the vessels, the vessels were designed so that the stack and the muffler and the upper section of the manifold could be removed and lifted up and out of the vessel, and then, by lifting the pistons or cylinders to the side in the engine room and your base, you could lift the crankshaft up and tilt it and get it out through the top with a crane without any damage to any wood construction of the hull at all.

Q. And that wouldn't have required any ship's carpenters, in other words? A. No, sir.

Q. Well, was that the way this one was taken out when you saw them trying to get it out?

A. No, sir.

Q. Have you been around the shipyards there in Seattle somewhat?

A. Six and a half years around there.

Q. What is the general custom, rule and regulation with regard to men on the boat doing any work on the repairs of the vessel when it is taken into a shipyard?

A. Just the union help in the shipyard touches the vessel on the outside below the waterline.

Q. Is that a definite and set regulation?

A. Yes, sir. [218]

(Testimony of Gerald Mason Oaksmith.)

Q. What about the inside work on the engine?

A. No, sir. The crew can do that.

Q. Is it customary—are you acquainted with the Fairbanks-Morse people?           A. Yes, sir.

Q. Is it customary, when the Fairbanks-Morse people undertake a job to take out the crankshaft and do work on an engine, that the crew assist them?           A. Yes, it is customary.

Q. In your experience with these TP 100s, how many men could work on an engine at one time taking it out of a vessel?

A. Probably five or six men could work on it.

Q. All the time, you feel?

A. Oh, they couldn't be busy all the time, but there could be that many men working on it in getting the crankshaft out and getting the heads off and the pistons out and things.

Q. How long would it take?

A. I can't answer that.

Q. You don't know. Have you any idea, or would you just be guessing?

Mr. Boochever: I object to that.

A. I would be guessing.

The Court: Objection sustained.

(Whereupon Court recessed for ten minutes, reconvening [219] as per recess, with all parties present as heretofore; the witness Gerald Mason Oaksmith resumed the witness stand, and the direct examination by Mr. Renfrew was continued as follows:)

(Testimony of Gerald Mason Oaksmith.)

Q. Mr. Oaksmith, by taking the crankshaft out of one of those TP boats, other than the way it was designed to be taken out, is there any possibility of bending it in that operation?

Mr. Boochever: I object. He hasn't shown that he is any engineer or expert qualified on that.

Mr. Renfrew: On the other hand I think he has shown that he knew all about them ever since they started to build them and was in charge of the assembly of boats.

The Court: Well, but it is pure speculation, unless there was something in the evidence to show that in removing the crankshaft they exerted such a pressure on one end of it or dropped it or something from which the inference could be drawn possibly that a defect of that kind could have resulted. There isn't anything like that in the evidence. It just calls for pure speculation.

Mr. Renfrew: Well, your Honor, I will admit that there isn't anything in the evidence to show it. I didn't know you had to drop it. I thought the very construction of the boat would require taking it out some way that it wasn't intended to be taken out that it could be bent in that operation. [220]

The Court: Well, but my point is that, unless there is something in the testimony to show that something occurred on which it could reasonably be inferred that the shaft might have been bent that way, why this evidence is just pure speculation.

Mr. Renfrew: I take it that the objection was sustained?



(Testimony of Gerald Mason Oaksmith.)

The Court: Yes. Particularly in view of the fact that there is testimony here—not only is there an absence of that kind of testimony but there is positive testimony of statements made to the effect that it was due to warping from heat. If we were in a position where we had to try to account for the shaft being bent, why then we might speculate on it, but otherwise——

Mr. Renfrew: I didn't recall any such testimony, of warping from heat, your Honor.

The Court: There is that testimony.

Mr. Renfrew: Does your Honor recall who so testified?

The Court: I don't recall the witness' name, but it was testified to, I think, in connection with the testimony of two witnesses.

Mr. Renfrew: I would like to have a transcript of any of that testimony that the reporter can find, and I will be glad to pay for the reporter finding that. [221]

The Court: Well, I am sure I haven't got a hallucination. I think it is there.

Mr. Renfrew: I rather imagine that I am getting senile, but still that is the reason I want to check on myself.

Q. Mr. Oaksmith, have you been in the marine supply business, did you say?      A. Yes, sir.

Q. For how many years, did you say?

A. About six years.

Q. And are you familiar with lifeboats?

(Testimony of Gerald Mason Oaksmith.)

A. Some.

Q. Do you know the lifeboat that Jack Anderson had off the TP 100?      A. Yes, I do.

Q. Did you see it?      A. Yes, sir.

Q. Where did you see it?

A. At Olson and Wing Shipyard in Seattle.

Q. And when?      A. 1949.

Q. And will you state the circumstances under which you saw it there?

A. I had a boat called the Stormbird moored at Olson and Wing Shipyard. It was called Northwest Ship Repair at that time, manager, Al Copp. In looking and searching for [222] a lifeboat for my boat the Stormbird which I had chartered to Alaska, I saw this lifeboat sitting over underneath the shed. I asked Mr. Copp who owned the lifeboat. Mr. Copp said he didn't know who the owner was, but he said Olson and Wing told him that, that the Lois Anderson brought the lifeboat in and left it there. I then asked Mr. Copp, if I insured the boat, would it be all right to borrow it, and he said he was sure I was reliable enough, that I could borrow it for two months, so I used that lifeboat, which was the one that he said Jack Anderson brought in there, for two months and returned it in September, 1949.

Q. Am I to understand from your testimony that the shipyard, Olson and Wing, had changed hands?      A. Yes, sir.

Q. Had changed hands——

A. Olson and Wing leased the plant out to Northwest Ship Repair.

(Testimony of Gerald Mason Oaksmith.)

Q. Well, now, from your experience in marine supply and having examined this lifeboat, what would you say its value was?

Mr. Boochever: Well, I object to that until he shows that he is qualified.

Mr. Renfrew: He has been in the marine supply business for six and a half years,

Mr. Boochever: Well, marine supply doesn't mean [223] anything about purchasing lifeboats.

The Court: Well, you might ask him whether he knows the value of lifeboats or boats of that type.

Mr. Renfrew: All right, your Honor.

Q. Do you know the value of lifeboats or boats of that type?      A. Yes, sir.

Q. All right. In your experience, then, what would be the fair market value of that lifeboat?

A. Three to four hundred dollars.

Mr. Renfrew: That is all. Your witness.

### Cross-Examination

By Mr. Boochever:

Q. Is that in the condition it was in when you found it in 1949?

A. No, sir. That is the approximate value in Seattle of surplus lifeboats of that type.

Q. You say surplus lifeboats?      A. Yes, sir.

Q. What would they cost new?

Mr. Renfrew: I object to it as immaterial.

The Court: Objection overruled. He has a right

(Testimony of Gerald Mason Oaksmith.)

to test the accuracy or correctness of his testimony by that.

Mr. Renfrew: Well, if it is for that purpose, yes.

The Court: I assume it is. [224]

Q. What would that cost new, Mr. Oaksmith?

A. I would be just guessing, but I would guess that the boats would cost approximately a thousand dollars new.

Q. And was this one in good condition?

A. In good condition; yes, sir.

Q. There weren't many surplus ones available at that time, were there? A. Yes, there were.

Q. Why didn't you buy one?

A. Well, the truth is I didn't want to spend three hundred dollars when I could borrow one for two months for nothing.

Q. You say you are familiar with this particular TP 100, and I believe you stated what that cost when new; is that right?

A. Approximately; yes, sir.

Q. Do you know that what Mr. Anderson paid, did he pay approximately ten thousand dollars for that boat?

Mr. Renfrew: I object on the ground that it is immaterial what Mr. Anderson paid for it.

Mr. Boochever: That is as material as his asking about the question of when it was new.

The Court: Yes. Objection overruled.

A. I don't know what Mr. Anderson paid for it.

Q. Who built the first TP 100?

(Testimony of Gerald Mason Oaksmith.)

A. The first TP boat, not TP 100, the first TP boat was built [225] by the Pacific Boatbuilding Company in Tacoma, the TP 228.

Q. Do you know who built this one?

A. This one was built in Stockton, California, by, I believe it was somebody in Coleberg, if I remember rightly. Coleberg was one of the partners in the company.

Q. Now, Mr. Oaksmith, you knew that this vessel was in poor condition when you saw Mr. Owens down there; is that right?

A. I had not examined the boat personally but I knew from the grapevine that the boat was in poor condition.

Q. And the crankshaft was bad?

A. I knew that the connecting rod was out when the boat was sold in Seward.

Q. Well, in other words——

Mr. Renfrew: Just a minute. I want a full answer to that question.

Mr. Boochever: Would the stenographer read the answer please?

The Court Reporter: A. "I knew that the connecting rod was out when the boat was sold in Seward."

A. When the boat was sold.

Mr. Renfrew: What?

The Court: When the boat was sold at Seward.

Q. Now, in other words, the only thing that you knew was wrong with the engine was that one connecting rod wasn't fastened; is that right? [226]

(Testimony of Gerald Mason Oaksmith.)

A. I knew that the boat, the crank in particular—it is called the crank journal—was rough. I knew that they were not able to hold bearings on that journal.

Q. In other words, they couldn't hold bearings on it?

A. Well, I knew that the crankshaft was possibly scored and possibly warped. The warping was the reason that I figured that the bearings would not hold on that journal.

Q. And you knew that at that time?

A. From the grapevine; yes.

Q. Now, are you still in the marine supply business?

A. No, sir.

Q. When did you cease to be in that business?

A. About two weeks ago.

Q. And while you were in that business did you have a good deal to do with Mr. Anderson?

A. Very little.

Q. Very little. Are you a close friend of his?

A. No, sir.

Q. How did you happen to discuss this case with him?

A. After I told Mr. Owens of what the reported condition of the crankshaft was, I met Mr. Anderson out at Olson and Wing, or one of the shipyards, and I told Mr. Anderson what I had told Mr. Owens, and Mr. Anderson said, "Well, at least you are not two-faced about it. You don't go behind my back and talk about it," and I said, "No. I am [227] telling you what I told Mr. Owens. I tried

(Testimony of Gerald Mason Oaksmith.)

to get him to buy a tug from my friend in New Westminster," and he said, "Well, when you are that honest, I can't hold it against you," and that is all that was said about it.

Q. Now, Mr. Oaksmith, you said you are familiar with the Fairbanks-Morse outfit, are you?

A. I am familiar with the company; yes, sir.

Q. Do you know Ted Engstrom?

A. I know of Ted Engstrom; yes, sir.

Q. Is that a good company?

A. It is one of the best.

Q. It is a competent boat engineering company?

A. That is right.

Q. I want to get one point clarified. Did you say that you knew they had trouble with the crankshaft at Seward? Is that what you understood?

A. I knew that when the boat was declared surplus in Seward and tied up that she had the crankpin out and that she had had a burned out bearing and that something was wrong with the crankshaft.

Mr. Boochever: That is all.

### Redirect Examination

By Mr. Renfrew:

Q. That was before Captain Anderson purchased the boat? [228]

A. Yes, sir. That was in 1946.

Q. Do you know how long the boat was laying in Seward before he bought it? A. No, sir.

Mr. Renfrew: That is all. Thank you.

## JACK CONRAD ANDERSON, SR.

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Renfrew:

Q. Will you state your full name?

A. Jack Conrad Anderson.

Q. Where is your residence, Mr. Anderson?

A. Well, it is in wintertime in Seattle, and in summertime it is up here. We have a home in Seldovia.

Q. And how long have you been engaged in navigation here on Cook Inlet?

A. About thirty years.

Q. And are you—do you hold any licenses?

A. Yes, sir; master's and also chief engineer's.

Q. Are you a machinist?

A. Well, I wouldn't say I was a first class machinist, but fair.

Q. You were the owner of the TP 100 with your son, were you not? [229]

A. That is right. He purchased the boat and, in other words, the boat was bought in his name.

Q. And you used it in the operation of your transportation business on Cook Inlet in the summer of 1947, did you, or 1946?

A. 1946; yes, sir.

Q. Now, did you have any trouble with the vessel in the summer, when you operated it here on the Inlet, to speak of?

A. We did have a little trouble with the number



(Testimony of Jack Conrad Anderson, Sr.)

three crank bearing. The journal seemed to run warm when we pushed the boat, but other than that the boat done a lot of work.

Q. And from the time that you bought the boat—well, what time of the year was it that you took delivery in Seward?

A. It was in the spring of 1946.

Q. And then as soon as navigation opened here, did you put it to work right away?

A. That is right.

Q. Am I to understand that a bearing was out of it when you bought it?           A. Yes.

Q. And did you have that repaired yourself?

A. We repaired that ourselves; yes.

Q. And then you started right away to operate the boat, did you?           A. That is right. [230]

Q. And that would be in the spring of 1946?

A. 1946; yes.

Q. And did you operate it during the spring and the summer of 1946 here in the Inlet?

A. That is right.

Q. And then when did you take it south?

A. About the 10th of February in 1947.

Q. And now, up and until that time had it operated without any additional trouble on the bearings?

A. That is right, with the exception that we babied that one cylinder. That one cylinder was giving us a little trouble.

Q. And is that the same cylinder that you hung up as has been testified to here?

A. That is right.

(Testimony of Jack Conrad Anderson, Sr.)

Q. Now, on the trip to Seattle did you have any difficulty?      A. None whatever, except—

The Court: Was that an additional cylinder, that was put out of commission, to the one that the previous witness testified was already out at Seward when you bought the vessel?

A. When we bought the vessel at Seward, sir, we repaired this one bearing. We repaired it. We repaired the bearing.

The Court: You were running on all cylinders after that?

A. That is right; but, as I say, we had to watch it very [231] closely.

Q. Well, was it the same one that you repaired that went bad?

A. That is right; number three. In other words, number three crankshaft journal was rough. We tried to polish it up. Due to the fact there were no facilities to do that kind of work, we waited until we got to Seattle.

The Court: The journal is the box with the bearing in it?      A. That is right.

Q. Now, on the way to Seattle you drove it down under five cylinders?      A. That is right.

Q. And was your son taking a power barge out at that time?      A. That is right.

Q. And there has been some testimony here concerning towing. Did you at any time tow the power barge?

A. Several times when he got behind too far. In other words, we made better speed than him, and

(Testimony of Jack Conrad Anderson, Sr.)

he got back a little ways. We threw a line on him, or otherwise ran circles around him and kind of waited for him that way.

Q. And did you have occasion to use the winch on the back end doing that?

A. Yes, sir; we used the towing winch.

Q. Now, on your trip south did the vessel strike a rock or log or some object? [232]

A. Now, whenever I make a statement like that, if anybody knows a master mariner——

Q. Just answer the question.

A. Yes. We say we struck a submerged object. Now, that can be rock, logs, or anything else, ice or anything else.

Q. Did you make the entry in the logbook?

A. Yes. Striking a rock, I believe.

Q. Will you explain to the Court just how the vessel acted? What happened? Did you go up on something and have to back off, or what?

A. No. We just hit, and I stopped immediately; on hitting I stopped and backed off; yes.

Q. And was the vessel hung up on some object?

A. No, sir.

Q. When you say you backed off, then what do you mean?

A. Well, it stopped, see, and I naturally wouldn't go on because the vessel stopped. We were running at slow bell at the time we struck, and the vessel stopped, and after she laid there a while I backed up.

(Testimony of Jack Conrad Anderson, Sr.)

Q. You mean that you stopped the vessel, or the vessel stopped?      A. The vessel stopped.

Q. And then what did you do? Ring the engine room?

A. I rang the engine room immediately and backed up.

Q. And what happened after that? Did you make any inspection? [233]

A. Yes. The first thing I spoke down to the engine room and asked what the condition was down there, and Mr. Saindon at that time was acting chief, and he told me that everything was under control, so then I started running around the boat, and we got a flashlight and things, and I looked over the bow and I seen that there were some slivers on the bow but, due to the fact that there was no leak, why we proceeded on to Funter Bay and anchored for the night.

Q. Did you make any further inspection there as to whether or not there was any damage?

A. Yes. We looked down in the hold in the fore-peak or in the chain locker. You can take a deck plate off on top of the deck right by the anchor winch, and you can look right down in through there, and we seen water down in there, but then there is always water in there on account of this deck plate on deck. We were right in the Gulf and we were in some pretty heavy weather there, and it is normal with the sea coming over. It seeps down through the chain pipe. That is the pipe where the chain goes down into this locker, and also,

(Testimony of Jack Conrad Anderson, Sr.)

this cover on the deck, it wasn't tight. You couldn't really tighten it.

Q. Did you stop at Ketchikan?

A. Yes, sir.

Q. Did you make any further examination there to see whether there was any serious damage. [234]

A. No, not that; only you could look on the bow there and you could see a few slivers hanging out there, but we figured, well, as soon as we get to Seattle, why she is going on drydock anyway, so——

Q. All right. Then did you proceed on to Seattle?      A. Yes, sir.

Q. Did you have to pump the vessel any going down?

A. No, sir. Pardon me; I recall. I believe that I asked once down there, "Is there any water in the boat at all down there, Harry?" And I talked down through the speaking tube, and he said——

Mr. Boochever: I object to what he said as hearsay.

The Court: Yes. It is not in response to any question.

Q. Well, I am not interested in what he said to you back up through the speaking tube, but just tell what was done.

A. I asked him if there was any water in the vessel, more than usual, and he said "No."

Mr. Boochever: I object.

Q. You can't tell what he said. Counsel objects. Merely state what you did. Did you examine it to see if there was any water?

(Testimony of Jack Conrad Anderson, Sr.)

A. Well, we pumped her out, I believe, dry there, or anyway that took place. The conversation was that——

Q. You can't tell the conversation, Jack. Tell what you did. [235]

A. In other words, I told Harry Saindon to see that she was pumped dry—through the speaking tube.

Q. All right. Was it pumped dry?

Mr. Boochever: I object to that unless he personally inspected it and knows that of his own knowledge.

Mr. Renfrew: Well, I assume that he——

Mr. Boochever: So far it has all been through the speaking tube, and I don't know what he did himself.

The Court: I don't think you can assume that in view of——

A. Pardon me, your Honor. As a master mariner, if you speak through a tube down in the engine room, you reply. If you have no more control over the crew than that, why God help us sailors; that is all I can say.

The Court: Well, except that you are not permitted over objection to say what somebody else said.

A. I see.

The Court: If they ask you what you said, why you can say that, but if you are asked about something or some condition, why, if you don't know of it, you can't tell what somebody else told you.

(Testimony of Jack Conrad Anderson, Sr.)

A. Yes; but, your Honor, if you are giving a direct order, why, you——

Q. Well, never mind, Jack. It doesn't make any difference. Was the vessel pumped dry? Do you know that? [236]

A. Yes.

Q. And then did it take any more water between there and Seattle?

A. To the best of my knowledge, it was not pumped any more as long as we had the vessel.

Q. And now, when you got to Seattle, what did you do?

A. When I got to Seattle, we moored the vessel over at Olson and Wing's Shipyard.

Q. And was it ever put in drydock there?

A. No, sir.

Q. Where did she lay? Right alongside of the dock in the water?

A. It laid right alongside of the Lois Anderson power barge.

Q. And how long did she lay there?

A. Oh, I would say probably two or three weeks. I wouldn't offhand——

Q. Now, during that period of time did you decide to sell the vessel?

A. Yes.

Q. And I will ask you, also during that period of time did you make any inquiries as to getting it repaired?

A. Yes. I had several inquiries in regard to repair. At Olson and Wing there was several times I went over and I wanted bids on it.

Q. Well, now, with regard to the engine, had

(Testimony of Jack Conrad Anderson, Sr.)

you had any [237] connection with the Fairbanks-Morse people previous to this time or with any other engine works there about checking on the engine or doing any work on the engine?

A. We had some correspondence with the Fairbanks-Morse people while we were running on the Inlet.

Q. You mean in the summertime?

A. In the summertime, yes. And I wrote back to them and inquired in regards to a new crankshaft if it happened to be needed, or anything like that, or what could be done to a crankshaft, because it had me kind of puzzled. As a matter of fact, due to the fact, I mean due to the fact that we couldn't get it repaired up here and didn't know what method they would use to repair the shaft, so I inquired about that, and he said there were several ways.

Mr. Boochever: I object to what he said as hearsay.

The Court: Yes. You can't say what somebody else said.

Mr. Renfrew: Your Honor, the Court allowed in this morning all the testimony about what the Fairbanks-Morse people said and about what they talked about when they were fixing the vessel. Now, I can show that this man received information as to what it would cost to repair that vessel.

The Court: Well, the testimony to which you call attention that was received, if it was hearsay, was received because you failed to object to it. [238]



(Testimony of Jack Conrad Anderson, Sr.)

Mr. Renfrew: Well, I will admit that I failed to object to it, and I only failed to object to it because I felt that in a trial before the Court and your allowing in all of this testimony in regard to the repairs, what so and so told him about how they had to fix this and had to fix that——

The Court: You say you wrote them a letter?

A. Yes, sir.

The Court: Inquiring what it would cost to repair?

A. Yes, sir; what method they used and what it would cost for a new shaft, or what other ways they would fix this shaft if it could be fixed.

The Court: Well, objection will be overruled.

Mr. Boochever: Well, your Honor, may I be heard on that, then? I think, if they wanted to have any testimony to that effect, they could certainly have gotten the deposition of the Fairbanks-Morse man, and we could have cross-examined him on it. This way, why we have this witness telling what someone else told him. It is pure hearsay, and we object to it.

The Court: Well, except that there has been hearsay to a considerable extent in the case.

Mr. Boochever: I don't believe that has any bearing on this whatever.

Mr. Renfrew: Well, if counsel wishes to object, your Honor, I will ask the Court for time to take the [239] deposition, or we can put this case off until next year and take care of it next year when you come back.

(Testimony of Jack Conrad Anderson, Sr.)

The Court: Well, very well, then.

Mr. Boochever: Your Honor, I certainly don't agree to putting it off to next year. I assume these depositions will be taken immediately after the trial.

The Court: No; I think that is just a mere hyperbole; that is all.

Q. Well, Mr. Anderson, then after you got down there to Seattle, did you make any effort to determine what it would cost to repair this vessel?

A. Yes, sir.

Q. And on the strength of what you were able to determine, what did you conclude it would cost to repair the vessel?

A. Approximately sixteen hundred dollars—that is for the crankshaft, you are speaking about now?

Q. That is for the crankshaft? A. Yes.

Q. And what did you estimate that the carpenter work could be done on the forefoot for?

A. They would fix the forefoot, oh, they said in the neighborhood—this is Olson and Wing——

Mr. Boochever: I object to this.

Q. Mr. Anderson, counsel has now, relying upon the technical rules of evidence which prohibit you from making any [240] statement that anyone told you unless it was in the presence of Mr. Owen here, so I asked you not what—what they told you, but what you concluded it would cost you to repair this vessel, put it back in good shape. How much money

(Testimony of Jack Conrad Anderson, Sr.)

did you figure it would cost you to put this back in good shape?

A. About five thousand dollars.

Q. All right. Now, where did you meet Mr. Owens?

A. I met Mr. Owens coming aboard the vessel at Olson and Wing Shipyard.

Q. Was that the first time that you ever saw him in your life?      A. That is right.

Q. Well, now, will you explain what was said between you and Mr. Owens and who was present, and tell us the conversation? Now, this time you can tell the conversation, anything that was said in Mr. Owens' presence.

A. Mr. Owens came aboard the vessel and asked me if I was the owner of the vessel. I said, "My son is the owner, but I am one of the representatives. We are working together," and he asked me, "Is the vessel for sale?" And I said, "Yes. We are planning on selling it," and so he asked me, "What are you asking for the vessel?" I said, "Twenty-five thousand dollars."

Q. All right.

A. So he said, "Oh," and so he says, "Do you mind if I look [241] around?" and I said, "No, not at all." So he started walking around the boat, and I followed him, and looked up forward and through the galley and through the fiddley and down in the engine room, and so he said, "What shape is the boat in?" I said, "In fair shape with the exception it has got a damaged forefoot and

(Testimony of Jack Conrad Anderson, Sr.)

a burnt”—I am trying to think of the name—“journal or crankshaft journal. We had a little difficulty with that and we are anticipating fixing it. We don’t know yet what method we are going to have to use in getting it fixed,” and he walked through the engine room, and I showed him, “There is the one, that piston that you see there; that is the journal that is damaged,” and I said, “scored, and there is the piston that is hanging in the clamp with a piece of wire around it. We pulled the piston up to the top center and clamped it off with a cable and a clamp,” and we walked aft into the lazaret, a gear locker, and looked over various things there. That is about all that was said at that time. He went. He did mention before he left he might be back, or something to that effect; I don’t just recall what.

Q. Now, did you have other people looking at the vessel?

A. Yes, sir. A party came down from Vancouver by the name of Pacific Coyle—tow boat or something. I don’t just recall what their last name was. He came aboard and he said—

Mr. Boochever: Your Honor, I object to what he said [242] as hearsay.

Q. Don’t say what he said.

Mr. Renfrew: I will stop him.

Mr. Boochever: Further than that, I object to anything further, other than that they had someone else looking at it. I don’t see the relevancy of any other prospective purchasers.

(Testimony of Jack Conrad Anderson, Sr.)

The Court: Yes.

Mr. Renfrew: Did your Honor rule? I am sorry.

The Court: I ruled against admitting evidence of that kind.

Mr. Renfrew: May I be heard for just a second, your Honor? I intend to connect this up to show that these other men were there working on the boat, miking the engine, when Mr. Owens came down and saw them doing it, and saw them working on it.

The Court: It may go in, then.

Mr. Renfrew: Thank you.

Q. Now, as a result of this man of the Pacific Coyle Company—did he send a surveyor there?

A. He had a surveyor with him, a competent surveyor with him there.

Q. Did that surveyor then examine the boat and go into the engine room?

A. He was in the engine room. [243]

Mr. Boochever: Your Honor, excuse me; I don't want to keep interrupting, but, unless it is shown that Mr. Owens was present when all this was going on, why, I think it is immaterial.

Mr. Renfrew: I am getting there.

The Court: Well, in view of the promise of counsel that he is going to show that, why, the objection will be overruled.

Mr. Renfrew: It is certainly what I have been told, your Honor, or I wouldn't bring it up.

(Testimony of Jack Conrad Anderson, Sr.)

Q. And now, while the surveyor was there going over the boat, did Mr. Owens come back?

A. Mr. Owens came back down there, and he seen that there was somebody down below there, and I told Mr. Owens that "I have a man from Vancouver here with an engineer, and they are miking the shaft, and I am going down there. We are trying to find a mark on the crankshaft to see whether it had been passed by the American Bureau or not." That seemed to be the main thing that he was interested in, and we found the marking, and as far as any questions of Mr. Owens—oh, yes, and Mr. Owens then told me that he had been informed that the crankshaft is twisted or bent, so I asked him, I said, "Who told you this?" Well, he didn't answer that, so, well, he said, "What is the best you will do on the boat?" I said, "The best I will do on the boat [244] is I will take twenty-five thousand dollars as is, or thirty thousand dollars and fix it up in running order."

Q. Was there any further conversation at that time?

A. No. The only thing is that he said, "That is the best you will do?" and so—yes—we got talking about terms, what kind of terms. Mr. Owens wanted to know what kind of terms he could get. Well, I said, "Naturally, we all like to get all the money we can, because I need it because I have a lot of work to do on another boat," so, well, he couldn't raise the ten thousand dollars, or whatever it was, something he said about he couldn't raise

(Testimony of Jack Conrad Anderson, Sr.)

the ten thousand dollars, but—and then he came back and he said how could he make monthly payments. I said, “Well, I would have to inquire through the bank, but I could get just about what you want through the bank because I have a pretty good reputation with the bank.”

Mr. Boochever: I object to that as self-serving evidence.

Q. Just tell what you said. Did you tell him that you had a mortgage on the boat or something?

A. Yes. I owed a mortgage to the bank. I said, “How would two thousand dollars—if you take the boat as is, how is two thousand dollars—five thousand dollars down and two thousand dollars a month,” and he said, “That sounds all right.” [245]

Q. Well, what happened then?

A. Well, I guess he left then.

Q. Did you make a deal then?

A. No, not then.

Q. All right. Well, now, did he ever come back again to the boat?

A. Well, I can't say anything about these other people leaving, can I?

The Court: Well, you can say anything in response to a question except what somebody else said unless it is one of the parties, and you are one of the parties and Mr. Owens is a party.

A. I see. Well, the people that was working on the engine, they got through with it, and they went over it from stem to stern, and they said they would give me a call within a few days—I believe

(Testimony of Jack Conrad Anderson, Sr.)

this was on a Monday—in two or three days, so I waited around, and there was no answer come, and we were getting kind of jittery, so I was going to call Vancouver and find out what the status was. Meantime Mr. Owens came down—I believe it was on a Saturday—came down again and asked me if that is the best I would do on the boat, and I said, “Yes,” and while we were talking a phone call came through on the loudspeaker that they wanted me at the phone.

Q. Wait a minute. Is there a loudspeaker on the dock? [246]

A. On the dock, yes. In other words, the operator at the phone, she talks through a mike, or whatever it is, and you hear it out in the yard. I went and answered the phone, and it was Pacific Coyle and Company, or Mr. Coyle, and was talking on the phone, and he asked me if that is the best I would do on the vessel. I said, “That is the best I will do, is the offer that I gave you the other day.” So, Mr. Owens was standing right there by me, so, I put my hand over the mike. I said, “This is the party in Vancouver. They are interested in the boat.” Several questions took place there, and I couldn’t just exactly tell the words, but they were interested in buying the boat as is, where is, so I asked Mr. Owens, “What shall I tell them?” “Tell them that you have sold the boat.” So I got back on the phone and told them, “Very sorry, I have sold the boat. I have made arrangements here and I have sold the boat,” be-



(Testimony of Jack Conrad Anderson, Sr.)

cause Mr. Owens told me, he said, "As soon as we get up town, no later than Monday, I will give you a check for five thousand dollars in escrow on the boat and two thousand dollars a month." So from there on, why, we went up to the office and—

Q. Now, before you went up to the office, let's go back to this discussion that you had with Mr. Owens about the ten thousand dollars down that you mentioned a while ago. Now, what was the conditions of the payment of the sale [247] if it was to be ten thousand dollars down?

A. The condition of the sale for ten thousand dollars down, I would fix the boat in running order.

Q. Well, what was the sale price to be then?

A. Thirty thousand dollars. In other words, on the ten thousand dollars down, I wanted five thousand down and—excuse me; I will repeat that. When I—if he bought the boat, I wanted him to pay twenty-five thousand dollars for the boat. That is what I wanted for the boat, see—take it as is where is. If he paid thirty thousand dollars for the boat, ten thousand dollars down, I would fix the boat in a running condition. So, he said over there at the phone he would take the boat as is for twenty-five thousand dollars, five thousand dollars down, and he would give me a note or a check as soon as we got up to the office and he seen, I believe he said, Mr. Morgan.

Q. And then did that conclude your conversation there that day?      A. That is all.

Q. And when did you next see Mr. Owens?

(Testimony of Jack Conrad Anderson, Sr.)

A. It didn't conclude. I took Mr. Owens to town, and we discussed the various things on the way in, in regards to if he had to take the tail shaft out and hoping that he wouldn't have to do that, because, I thought, if he could get a competent man down there and turn that journal, it could be fixed or [248] otherwise they have got a method of metal spraying the shaft, so I said, "There is a way of taking the shaft out."

Mr. Boochever: Excuse me. Is this a conversation with Mr. Owens?

Mr. Renfrew: Yes.

A. Yes; driving to town.

Mr. Boochever: All right. I just wanted to get that straight.

A. There is a way of taking the shaft, the shaft has to be pulled out through the stack, remove the stack and about two lengths of manifold pipe, I believe it is, and then lift the cylinders and take the crankshaft up through the fiddley in the stack.

Q. Now, did Mr. Owens say anything to you about the crankshaft?

A. Yes, sir. He told me at that time that if such a thing would happen that he believed he could get a surplus crankshaft in Juneau.

Q. And what did you do then?

A. I left him off in town, I believe at the Washington Hotel, or some place in town.

Q. And when did you see him again?

A. We seen him Monday, I believe the following Monday, and we wrote up an agreement then.

(Testimony of Jack Conrad Anderson, Sr.)

Q. This is Plaintiffs' Exhibit 1. I ask you, is that the [249] agreement as near as you can recall?

A. Yes.

Q. Now, on the original agreement there was also a directive to the First National Bank of Anchorage, was there not? A. Yes.

Q. And did you advise Mr. Owens that that is where you had the mortgage on the vessel?

A. Yes.

Q. And what arrangement was he to make for the payment; where was his payments to be made?

A. His payments was supposed to be made to the First National Bank of Anchorage.

Q. And did Mr. Owens do that? He made the payments, didn't he? A. Yes.

Q. And now, when was the first time you had any knowledge—wait a minute, before we get to that. These papers were made up in Mr. Owens' lawyer's office? A. That is right.

Q. You didn't have a lawyer down there?

A. No, sir.

Q. And that is the first time you ever met his attorney? A. That is right.

Q. And the papers were executed there?

A. That is right. [250]

Q. And Mr. Owens' check for five thousand dollars, that was left not in escrow in the bank but it was left with his lawyer, wasn't it?

A. That is right.

Q. And his lawyer kept that even though he had

(Testimony of Jack Conrad Anderson, Sr.)

possession of the boat until you got the bill of sale from the Army?      A. That is right.

Q. Now, in the meantime, after you had made your deal up there, what happened to the boat?

A. He asked me if he could take the boat down and start working on it because he had to repair it and he would like to move it down to Brueger's Dock or some place; I don't recall the name, Stikine Fish, or down on the lake; and I said he could take the boat at any time and I would be willing to let him have the boat and fix it.

Q. Did he take the boat then right away?

A. That is right.

Q. Were you aboard when it was taken over there?      A. That is right.

Q. Sir?      A. Yes.

Q. And was Mr. Owens aboard?      A. Yes.

Q. And did it go over under its own power?

A. Yes, sir. [251]

Q. Now, how long did you remain in Seattle, Mr. Anderson, before you came north?

A. We left Seattle on the third of June.

Q. Then you were in Seattle from the time that you made the sale to Mr. Owens in the first of April until the third of June?

A. That is right.

Q. Now, did you hear anything from Mr. Owens or from his attorney during that period of time that you were there in Seattle, any objection of any kind to the deal?      A. No, sir.

Q. None at all?      A. None at all.

(Testimony of Jack Conrad Anderson, Sr.)

Q. And were you—did you have the power barge, the Lois Anderson, was she tied up there during that period of time?

A. That is right.

Q. Right at the same dock?

A. Same dock.

Q. Now, when you got ready to come north, did you see Mr. Owens about the lifeboat?

A. I spoke to Mr. Owens sometime before that. I believe it was in the hotel or some place. I asked him, "Say, I want to know about the lifeboat you got on there. Are you going to use both the lifeboats you got on board the [252] tug?" And he said, "No; I don't think so." He said, "It is pretty crowded on that deck, and I am going to take that lifeboat off anyway and put a work boat on there," and then I said, "Is it O.K. if I use the lifeboat to go north? I have got a lifeboat in Seldovia, so can I use the lifeboat to go north?" And he said, "Yes." He said, "And then you can throw the lifeboat off on your return back here. Throw the lifeboat off here on your return back to Seattle, and I will pick it up sometime when we come in."

Q. Now, did you take the lifeboat then when you went north?

A. Yes. We went up to the TP 100 and picked up the lifeboat.

Q. Now, you heard Mr. Blanchard testify here this morning?

A. Yes.

Q. Was Mr. Blanchard there when you got the lifeboat?

A. Yes.

(Testimony of Jack Conrad Anderson, Sr.)

Q. Did you have any conversation with him?

A. Not much. The only conversation I had with him was I said, "I come over here to get a lifeboat that Mr. Owens O.K.'d for me to use." He said, "Yes. I know that."

Q. And that was about the extent of your conversation?      A. That is right.

Q. Now, do you remember the day—when that was with relation to when you started north?

A. No; I wouldn't recall that. [253]

Q. You don't know whether that was a day or two before you started north?

A. Shortly before. We was ready to get the lifeboat on, so I think we were getting ready to leave the lake, so it must have been in the latter part of May. I wouldn't say for sure.

Q. Now, you didn't leave Seattle at all until the third day of June; is that right?

A. That is right.

Q. Had you heard anything from anybody, either Mr. Owens or Mr. Mills or Mr. Chadwick, I believe was the other lawyer, either Mr. Chadwick, Mr. Mills or Mr. Owens, about any "dif-fugulty" or dispute or anything?

A. No, sir; none whatsoever. We never heard anything until we got up here, and I came up to the banker and made a deposit, and he said, "Say, I have got a letter for you in here. Do you know that Mr. Owens is going to sue you?" I said, "For what?" Well, he said, "He is going to sue you."

Q. When was that?

(Testimony of Jack Conrad Anderson, Sr.)

A. Oh, that must have been the latter part of June.

The Court: Well, did Owens know you were in Seattle until June 3rd?

A. He must have.

The Court: How would he know it? [254]

A. I don't know.

The Court: Well, I am asking you.

A. Well, I am sorry, sir. Your Honor, he knew where we were at.

The Court: Where were you?

A. At Olson and Wing Shipyard.

The Court: Why would he know you were there? What makes you think he would know you were there?

A. Well, because several occasions we talked about different work to be done on the boat.

The Court: Well, but how would he know you were going to be there until June 3rd?

A. I don't know.

Q. Didn't you testify, Mr. Anderson, you told him you had a lot of work to do on your other boat?

A. That is right.

Q. And your other boat was tied right up there at the time?

A. That is right.

Mr. Boochever: I object to it as leading.

Mr. Renfrew: It is leading, but it is refreshing his recollection. He testified to it before.

The Court: Well, I think it is the kind of leading question that is harmless.

Q. Then the first word you heard of it was after

(Testimony of Jack Conrad Anderson, Sr.)

you got north? [255]           A. To Anchorage; yes.

Q. Now, I want to call your attention to Plaintiffs' Exhibit, the letter; I think it is June 11th that letter is dated. I want you to examine this. This is Plaintiffs' Exhibit No. 20. That is your signature, isn't it?           A. That is right.

Q. Now, what is the date on that letter?

A. June 11th.

Q. And now, did you receive a letter to which that was a reply to?

A. Well, this is—I don't recall if this was the letter that I answered when I got up here, that I got from the bank. Anyway they told me at the bank and they handed me a letter, and I don't remember if this is the one I answered. It must be though because I didn't know anything about it until I got up here.

Q. Well, immediately after you got that information from the bank, or wherever you got it, is that when you immediately wrote Mr. Owens?

A. That is right.

Q. And did you ever get an answer to that letter?

A. I never did get an answer to this letter; no, sir.

Q. Now, did you not at a later date hear from Mr. Owens' attorneys again?           A. Yes. [256]

Q. Do you know when you received that letter?

A. No, sir; I don't.

Q. Well, where were you during the summer of—what is the date of that letter? 1948?



(Testimony of Jack Conrad Anderson, Sr.)

A. 1947.

Q. Where were you during that summer?

A. We were running up and down the Inlet here.

Q. Here in Cook Inlet? A. That is right.

Q. And now, did you subsequently return this lifeboat?

A. In the fall when we returned to Seattle I took the boat off at Olson and Wing Shipyard; yes.

Q. Is that where you got it?

A. No. I got it at Brueger's, but he told me to take the boat. I never went up to Brueger's. He told me to set the boat off at the same place we had the tug at that time.

Q. Where did you have the conversation with him asking him if it would be all right to use it?

A. I can't tell if it was on the way going in in the car that day when we made the deal, or if it was out at the yard.

Q. You mean—was it at the time you were making the deal? A. That is right.

Q. It was either at the shipyard where the boat was or on the way into town?

A. On the way into town; yes, sir. [257]

Mr. Renfrew: I think that is all. Your witness.

### Cross-Examination

By Mr. Boochever:

Q. When did you purchase the TP 100, Mr. Anderson? A. In the spring of 1946.

(Testimony of Jack Conrad Anderson, Sr.)

Q. And you purchased it for ten thousand dollars?

Mr. Renfrew: Now, I object to this as immaterial. Now, just a minute. I didn't ask him on direct examination anything about the price. Now, what can he ask him, how is that material, as to what he purchased it for?

The Court: Well, he testified he did purchase it, didn't he?

Mr. Renfrew: Yes; he purchased it.

The Court: Well, that certainly would be within the scope of that direct examination then to ask him what price he paid for it.

Mr. Renfrew: Well, how is it material what he paid for it?

The Court: Well, it would seem material in view of the fact that you have introduced evidence that he knew it cost two hundred and fifty thousand.

Mr. Renfrew: But your Honor refused to let me show what it was sold for.

The Court: What it was sold for? [258]

Mr. Renfrew: Yes. I wanted to show that Mr. Owens sold the boat, and you said that was immaterial. Now, it can't be any more material to show what it—I presume that it cost two hundred and fifty thousand dollars when it was new. That was only to show, your Honor, that the overhaul of such a boat couldn't be expected—I mean, that Mr. Owens couldn't be expected to have gotten the boat in first class shape for twenty-five thousand dollars that cost two hundred and fifty thousand dollars

(Testimony of Jack Conrad Anderson, Sr.)

three years before. That is the only purpose for that.

The Court: Well, but of course there is one radical difference between the two prices to which you call attention. One is apparently long after this lawsuit accrued, and anything leading up to the controversy might be relevant, whereas something that occurred after the controversy developed could hardly be, except under exceptional circumstances, relevant to anything.

Mr. Renfrew: Well, what possible relevancy can there be, your Honor, as to what Mr. Anderson paid for this boat? Now, where can that be relevant in this case in any event? I want to be shown where it can be shown that the purchase price of the boat by Anderson could have any bearing upon any issue in this case.

Mr. Boochever: If I might answer that, your Honor. I objected of course to his question regarding what the boat [259] cost when new. But, as I understood counsel's theory, that had some relevancy in regard to the cost of repair and also had some relevancy in regard to what warranties would be relied on. Now, I want to show that these boats were selling for about ten thousand dollars when they were sold as surplus, and I think I am certainly as entitled to show that as he was to the other evidence brought in.

Mr. Renfrew: Now, your Honor, it wouldn't make any difference if somebody gave him the boat. That hasn't got a thing to do with this contract.

The Court: Well, it wouldn't make any differ-

(Testimony of Jack Conrad Anderson, Sr.)

ence if somebody gave him the boat, but I think it would make some difference how much he paid for it in view of the other testimony.

Mr. Renfrew: I want the Court to state for the purpose of the record in what way you will consider the evidence of what he paid for the boat.

The Court: Well, of course in the first place, I am not required to commit myself in what way I will consider any piece of evidence. I may consider it for more purposes than appear apparent at the time it is introduced, so that I am not going to commit myself on anything of that kind. But I think that it throws light on the condition of the boat.

Mr. Renfrew: On the condition of the boat?

The Court: Yes. [260]

Mr. Renfrew: At the time that he purchased it?

The Court: At a subsequent time, in connection with all his other testimony showing what happened between the time that he purchased it—we have got practically everything in now between the time he purchased it and even before, when the boat was laid up in Seward. The only thing we haven't got now is the price he paid for it.

Mr. Renfrew: Yes, I appreciate it in one particular, your Honor, but I have a fear that the Court can't help but be swayed by the fact that, if it was shown that this man bought that boat for less money than he sold it for, why he must have made a profit, and I stand ready to prove to the Court that Mr. Owens made a good deal more profit

(Testimony of Jack Conrad Anderson, Sr.)

on his sale of the boat than Mr. Anderson did, but the Court wouldn't allow me to put it in.

The Court: Well, now, the reason, as I said a moment ago, why I don't think the price at which the plaintiff sold the boat would be material is because it was after the boat was repaired and after this controversy had originated, and this is all leading up to the controversy, and it certainly throws some light on the condition of the boat. What the plaintiff got for it after he had it all repaired, as he testified to, would certainly not be relevant, so objection is overruled.

Mr. Renfrew: Very well, your Honor. [261]

Q. You purchased the boat for ten thousand dollars, didn't you, Mr. Anderson?      A. Yes.

Q. Now, Mr. Anderson, you said in the spring there that one bearing was out. Actually there was more than one bearing that was having trouble at that time, wasn't there?

A. We looked over all of the bearings but we just checked them.

Q. And isn't it true that the vessel after you got it had been having trouble with one bearing after another, in other words, as Mr. Oaksmith, your witness, testified a little while ago?

A. Repeat that again, please.

Q. Has it had trouble with a number of different bearings, and from time to time you had trouble with a different bearing?      A. No, sir.

Q. You just had trouble with one bearing?

(Testimony of Jack Conrad Anderson, Sr.)

A. One bearing.

Q. Now, you stated that you left on February 10th to go on down below; is that right; about that?

A. Yes; about that.

Q. Now, you had the one cylinder held up; is that right?      A. That is right.

Q. That didn't interfere with your running the vessel? [262]      A. No.

Q. You could run her at good speed and didn't have to in low, or low speed, all the way down?

A. The only reason we went on the slow bell was because we was standing by the power scow.

Q. Part of the time, you mean, you ran on slow bell, when you were standing by the power scow?

A. No. We went slow speed because we were so much faster than the power scow.

Q. And when you were towing her, did you push her up more?

A. We pushed her up, yes, if it was good weather.

Q. Now, you state that on this one day you went in and hit this something; you didn't say what?

A. Submerged object.

Q. As I understand it, you hit this object and came to a stop; that is what you testified before?

A. That is right.

Q. Have you ever hit a log in your experience as a boatman?      A. Yes.

Q. Did you ever come to a stop hitting a log?

A. Yes.

Q. When?

(Testimony of Jack Conrad Anderson, Sr.)

A. Right out here in the Sound.

The Court: Well, first you better find out what kind of a boat and whether the log was crosswise to the bow [263] of the boat or——

Q. What kind of boat was that?

A. The Princess Pat.

Q. The Princess Pat?

A. Yes. That is a boat that we have got that we used on the mail run.

Q. How big a boat is that?

A. Sixty-five foot.

Q. How big a boat is the TP 100?

A. Ninety-five; ninety-six.

Q. Now, with this one with the Princess Pat was there one log there or was it attached to the shore, the log?

A. No. This particular time it was a big saw log; we hit it just as we got out of the locks.

Q. You hit this big saw log just as you got out of the locks?

The Court: Was the log end on?

A. No. We hit it on the side.

The Court: A glancing blow?

A. No. Right straight ahead. Yes; I mean we hit it approximately in the middle, I would say. Anyway we kind of jumped up on it like, but we stopped right there.

Q. Jumped up on the log?

A. Well, hit the log and came to a stop.

Q. Now, did you see any log out there when you

(Testimony of Jack Conrad Anderson, Sr.)

stopped this time on the way down to Seattle? [264]

A. Well, there were a lot of logs all over.

Q. A lot of logs all over. But I mean, right when you hit this something, this object? You were in the bridge, weren't you? A. Yes, sir.

Q. And did you see a log down there?

A. No. You couldn't see anything because it was thick weather. That is the reason we went into Funter Bay there.

Q. As a matter of fact that was a rock that you hit, wasn't it? You know that of your own knowledge?

A. Yes; I would say probably it was a rock. That is what I put down in the logbook, too.

Q. And you put down in the logbook that it was a rock? A. That is right.

Q. And you had good reason to believe there must have been fairly good damage to the front end of your boat as a result of hitting that, didn't you?

A. Well, I wouldn't say. That is just one thing I wouldn't say.

The Court: What speed were you making?

A. When we hit, oh, probably going about—we were running slow on account of the weather.

The Court: Well, you testified to that, but what speed would that be?

A. I would say approximately—I couldn't recall just now, [265] but about four or five knots.

Q. Now, when you sold this boat to Mr. Owens



(Testimony of Jack Conrad Anderson, Sr.)

you told him that the forefoot was bruised, didn't you?

A. I told him like this, "The boat is in a fair condition with the exception of a damaged forefoot and a crankshaft journal, scored crankshaft journal."

Q. Now, I show you a picture of the vessel. I show you Plaintiffs' Exhibit No. 8, and point out the forefoot on that picture, please.

A. Well, I can't even tell if this is a boat or not.

Q. Well, I am not much of a boatman, but it looks like the front end of a boat to me.

A. Can you tell if this is a boat?

Q. I would certainly say it was; yes. It has been testified to that this is the front end of the TP 100.

A. How do you figure? How do you know this is the TP 100?

Q. Well, I am not on the witness stand, Mr. Anderson. I am saying, assuming it is the front end of the TP 100?

A. I would say that the forefoot should be in here some place if it is a boat.

Q. The forefoot isn't there though; is that right?

A. I believe this is part of it.

Q. But it has been demolished; is that right?

A. That is right.

Q. Mr. Anderson, who were the members of your crew on the [266] way down there?

(Testimony of Jack Conrad Anderson, Sr.)

A. Gosh, I can't even tell the names now. Mr. Saindon was acting chief.

Q. And who else were in your crew then?

A. I couldn't recall the names now.

Q. You don't remember any of them?

A. No.

Q. Now, you stated that after you hit this rock and pulled off and went on along that you figured on dry-docking in Seattle and determining what the damage was? A. That is right.

Q. But you didn't do that?

A. I didn't do that; no. I didn't want to do it unless we were going to keep the boat ourselves.

Q. Now, you also said at Ketchikan there that you pumped the watertight compartment dry there?

A. Not the watertight, the watertight compartment, I never made a statement like that.

Q. Well, I understood you to that effect. You don't intend to have that as your sworn statement then? A. No.

Q. Now, when you started off down to Seattle did you start off with the intention of selling the boat? Is that why you were going down to Seattle?

A. We were going to Seattle to fix up the boat ourselves. [267]

Q. But after you got down there you changed your mind and decided to sell it; is that right?

A. Well, yes.

Q. Is that because of the way it rode on the way down and because of hitting this rock?

(Testimony of Jack Conrad Anderson, Sr.)

A. No.

Q. Other factors entirely made you change your mind between starting off and getting down to Seattle?

A. When we left Seldovia my intention to go out was to fix the boat up, and either that or getting a smaller boat, trade it in and get a smaller boat. It was too big. It drew too much water for our purpose up here.

Q. Well, now, you have said two things, Mr. Anderson. First you said you intended to go down there to fix the vessel up?

A. To fix the vessel up; yes.

Q. That is what you intended when you left?

A. That is right.

Q. And then when you got down there you changed your mind and decided to sell; is that right?

A. I didn't change my mind. There was several parties came down and asked if I wanted to sell it.

Q. And that is when you decided you might as well sell it?

A. Well, my son and I talked it over, and we figured we would get a smaller boat. [268]

Q. As far as you knew, why you weren't going to sell it just to get rid of it because it was a lemon?

A. No.

Q. And as far as you knew, it was all right except for one crankshaft bearing and for a bruised forefoot; is that right?

A. Damaged forefoot; yes.

(Testimony of Jack Conrad Anderson, Sr.)

Q. And that is what you told Mr. Owens, isn't it?  
A. That is right.

Q. And that it was in good condition otherwise?

A. I never made that statement.

Q. You said fair condition?

A. Fair condition.

Q. Fair condition?           A. "Roger"; right.

Q. Now, you said something about if you would take care of fixing it up into running condition——

A. Running condition; yes, sir.

Q. Well, wasn't it in running condition? You ran down on it, didn't you?

A. Yes. But I wouldn't call it running condition when there is one crank bearing scored and then a damaged forefoot.

Q. Now, in regard to this offer of paying five thousand dollars down and the balance and so forth, I want you to refresh your memory. You said, I believe, that you discussed [269] this ten thousand offer and that you asked him how about five thousand down; is that what you said before?

A. The reason I wanted ten thousand dollars down, if I had to fix the boat I would use the five thousand dollars to fix the boat up with.

Q. Well, I am not interested in your reasoning now, Mr. Anderson. Isn't it true that **Mr. Owens** came up to you and that he said, "I have got authority from Mr. Morgan to offer you five thousand down and two thousand a month," and that he made the deal at that time?

(Testimony of Jack Conrad Anderson, Sr.)

A. No; he asked me what the best terms he could get.

(Whereupon Court adjourned until 10:00 o'clock a.m., March 10, 1951, reconvening as per adjournment, with all parties present as heretofore; the witness, Jack Conrad Anderson, Sr., resumed the witness stand, and the Cross-Examination by Mr. Boochever was continued as follows:)

Q. Mr. Anderson, yesterday when you were on the stand and your counsel was questioning you, I believe you testified about coming into Ketchikan on your way down to Seattle; is that right?

A. Yes.

Q. And that you testified that you gave orders to your engineer to pump the vessel out; is that right?

A. I got to figure how to explain. I don't know the terms of the Court.

The Court: You can explain it in your own language. [270]

A. O.K. I went to the speaking tube and asked the chief if it looked like there was any water in there.

Q. Did you tell him to pump it out?

A. I said, "If there is any down there, pump it dry."

The Court: Well, are you referring to the time right after striking this rock, or whatever it was, or are you referring to the time at Ketchikan?

(Testimony of Jack Conrad Anderson, Sr.)

A. This is the time at Ketchikan.

Q. After you had struck the submerged object?

A. That is right.

Q. Now, after that you didn't do anything further about that; you left it up to him to follow out your orders; is that right? A. That is right.

Q. So you didn't personally inspect that water-tight compartment, did you, at that time in Ketchikan?

A. I don't recall that. I wouldn't recall that.

Q. Now, I believe, getting on now to when you were talking with Mr. Owens, you remember Mr. Dent being with Mr. Owens on one occasion, don't you? A. No, sir.

Q. You don't remember Mr. Dent at all?

A. No, I don't remember him at all.

Q. Do you remember another man being with Mr. Owens?

A. There was a man up on the dock, I remember, came down. [271] There was a man up on the dock, but he didn't come down there talking to me.

Q. You don't remember him at all then?

A. I don't remember. I seen a man. There was a gentleman down there with Mr. Owens, but he was up on the dock.

Q. You don't mean to say that Mr. Dent wasn't with Mr. Owens when you discussed this matter?

A. I wouldn't say he was, or I wouldn't say he wasn't.

Q. That is all right. You just don't recall it now. Mr. Anderson, you state that while you were

(Testimony of Jack Conrad Anderson, Sr.)

on the dock one time while you were talking to Mr. Owens a call came over the loud-speaker for you to go to the phone, and it was this Canadian group calling; is that right?      A. That is right.

Q. Where was the phone?

A. Over in the office.

Q. And you went over into the office; is that right?

A. Yes, sir. Mr. Owens went with me.

Q. He went with you?      A. Yes.

Q. When you went to make this phone call?

A. That is right.

Q. And then during this you spoke to him and so forth, as you have testified, after hearing the phone call?      A. Yes. [272]

Q. And that is the time that the Canadian people phoned you while Mr. Owens was present; is that right?      A. Yes.

Q. That was the only time?

A. No. I believe they called me two or three times.

Q. While Owens was present?

A. Well, I wouldn't say, but I know at this particular time he was there.

Q. And that is the only time you recall that he was there when the Canadian people phoned; is that right?      A. Yes; as I recall it.

Q. Do you remember whether the Canadian people phoned you while you were in Mr. Mills' office with Mr. Owens?

(Testimony of Jack Conrad Anderson, Sr.)

A. I wouldn't say for sure. I don't remember that.

Q. As a matter of fact, Mr. Anderson, isn't that the time that they phoned you and you were in the office having the agreement drawn up and that you got this call that came into Mr. Mills' office from the Canadian people?      A. No, sir.

Q. That is wrong, and you are sure of that?

A. I am sure I got the call at Olson and Wing Dry Dock, and that is when I put my hand over the mouthpiece and said, "This is Pacific Coyle Company up there. They want to know about the tug."

Q. And you are sure you didn't get that call from the Canadian [273] people while you were up in Mr. Mills' office and that you spoke to Mr. Owens at that time about it?

Mr. Renfrew: Well, your Honor, he has answered that question several times. I don't understand the last question myself. He explained how he got the call at the dock.

A. Pardon me; but, if I got a call up to the other office, it was just trying again if there was a chance or something, but I can't recall that.

Q. You don't recall it?

A. No. But I know this particular time I got it at——

Q. Well, now, what I want to know, are you saying that there was no such call in Mr. Mills' office, or are you saying that you can't remember?

Mr. Renfrew: Well, now, your Honor, he has



(Testimony of Jack Conrad Anderson, Sr.)

stated that he can't remember and, if he did get such a call up there, it was because they were trying to make one last effort to buy the boat, but he can't recall definitely. Now, that testimony is clear. He said that four times.

Mr. Boochever: Well, your Honor, I don't believe I have gotten an answer on my question yet, and I don't think it is proper for counsel—there is nothing improper about my trying to get it straight with the witness. I am not arguing with the witness, and I don't think it is proper for counsel to try to state what the witness is intending to say.

Mr. Renfrew: Well, I submit, your Honor, I will [274] rely on the record. He has answered it three different times.

The Court: Well, but at the same time he has expressed uncertainty about it and, if he had been positive in his answer, then of course the Court could stop any further questions, but, where he has expressed uncertainty, then for the purpose of calling it to his attention or emphasizing something I think the question is proper. The objection is overruled.

Mr. Renfrew: I didn't realize, your Honor, that the answer that, "I can't state. I don't recall," is uncertain.

The Court: His last answer was to the effect that he was uncertain whether there was any call at Mills' office but that, so far as he recalls, nothing of that kind happened, so, so long as he is that un-

(Testimony of Jack Conrad Anderson, Sr.)

certain, he shouldn't be foreclosed from further examination.

Mr. Renfrew: Very well, your Honor.

Q. Mr. Anderson, can you state definitely whether there was such a call to you—it must have been a little something unusual, getting a call from outside while you were in Mr. Mills' office—now, can you recollect one way or the other on that, whether you got such a call or not?

A. I can't. But I know I got the call and I determined—if there was such a thing, it was just more or less—the time we were at the drydock, that is the time I decided, and I asked Mr. Owens what to do, and he said—— [275]

Q. Just excuse me, Mr. Anderson. You aren't answering my question. My question is simply, do you know definitely, can you say definitely "Yes" or "No" as to whether you got that call in Mr. Mills' office? A. Not the first call.

Q. I am not saying the first or second; just, did you get a call in Mr. Mills' office from the Canadian people? A. I don't remember.

Q. You don't remember. That is what I wanted to find out in the first place, is whether you remember. Now, you stated that you were driving Mr. Owens into town in your car, I believe, and that at that time you mentioned something about how he could take the crankshaft, if he ever had to take the crankshaft out, through the funnel; is that right—through, what was it you said—the stack, I mean?

(Testimony of Jack Conrad Anderson, Sr.)

A. We discussed that on the boat also, and on the way in they asked me—we got into a discussion. I don't know if it means anything or not, but we were talking about this and that, how we done it when I was with the Army Transport. Several occasions that happened, and we took the funnel off, took two parts of the manifold off, set the cylinders aside and, I believe, I said, "I believe that is the only way you can take a crankshaft off the boat without damaging it."

Q. Now, Mr. Anderson, that was when you were working on an [276] Army tug; is that right?

A. Well, I was working for the Army Transport Service here.

Q. With a different vessel?

A. Absolutely.

Q. Now, on the payment of five thousand dollars, you state that was left with Mr. Mills; is that correct?

Mr. Renfrew: Your Honor, the——

A. I didn't have it.

Mr. Boochever: I can question the man about it.

Mr. Renfrew: If your Honor please, it is merely to avoid loss of time here on Saturday morning. We are trying to get the case over with. It is in evidence by counsel's own witness, Plaintiffs' Exhibit No. 1, that it was left there.

Mr. Boochever: My question is purely preliminary, in trying to call the man's attention to it.

Mr. Renfrew: We will stipulate it was left with Mr. Chadwick. That will save time.

(Testimony of Jack Conrad Anderson, Sr.)

The Court: Your question probably should assume that as part of the question, and go on with your question, and then it won't be necessary to——

Mr. Boochever: Your Honor, I don't think I have to phrase my questions exactly like counsel wants and, if there is something in evidence and I can save a lot of time——

Mr. Renfrew: You can save just as much time, Mr. [277] Boochever, if you would confine your examination the way it should be instead of a lot of preliminaries.

Q. Mr. Anderson, referring to that five thousand dollar payment, it was paid to you or your account on April 22, 1947; isn't that right?

A. It might have been paid to my account, but I can't recall that because I never seen the check and never handled it. It was done all between Mr. Chadwick and Mr. Owens and the bank. The whole transaction took place there.

Q. Now, your counsel has stated that you received a letter from Mr. Mills dated May 17, 1947. I will ask you to look at that letter and see if that doesn't refresh your memory as to the consummation of that sale and the payment of that money to you on April 22, 1947?

Mr. Renfrew: Now, your Honor, the witness has answered the question, that he never saw the money, it wasn't sent to him, and it was deposited by Mr. Mills presumably in his bank account; that is, the agreement itself states the money was to be sent to a bank designated for the purpose of the appli-

(Testimony of Jack Conrad Anderson, Sr.)

cation of the mortgage; and the witness has testified that he doesn't know when it was sent or when the bank received it. Now, I submit that the best evidence is the bank records and, if counsel wishes to produce those, he can do so, and that is the only possible way that this question can be definitely ascertained. [278]

The Court: I have forgotten the question.

Mr. Boochever: The question, your Honor, was, I wanted to show him a letter and ask him to refresh his memory as to when that money was put in his account.

Mr. Renfrew: We will stipulate that the letter from Mr. Mills says that the transaction was consummated on the 22nd day of April. However, we don't agree that that is true because the only record that Mr. Anderson has does not disclose that fact at all. It shows that the vessel was documented on the 20th day of May and that record is put in evidence. Now, we submit, your Honor, that the only way to prove when this money was paid in accordance with the agreement is the bank record, and that is wholly within counsel's power to produce.

Mr. Boochever: Your Honor, I am certainly entitled to ask this witness on cross-examination whether he knows the date and I can give him anything that may refresh his memory and ask him whether it does and whether he knows that is the date.

The Court: Yes, I think so. If it was incumbent on the plaintiff to prove the exact date when the

(Testimony of Jack Conrad Anderson, Sr.)

money was deposited, it is true that you would have to get the bank records if you couldn't prove it any other way; but for the purpose that he apparently has in mind here the objection will have to be overruled. [279]

Mr. Renfrew: Well, but, your Honor, this witness has testified he doesn't know; he never saw the money; it was sent by Mr. Mills. Here is the letters, the whole file.

The Court: Well, that may be, but counsel has the right to refresh his recollection to see whether or not he will change his testimony.

Mr. Renfrew: How can he refresh his recollection when he has answered that he does not know; he never saw the money; it was left with Mr. Mills and sent by Mr. Mills presumably to the bank.

The Court: Well, that may be the way it will turn out, but he has the right to call his attention to something that he thinks might refresh his recollection.

Mr. Renfrew: And he has asked it, and I have offered to stipulate with him that in that letter Mr. Mills makes the statement that the deal was consummated on the 22nd of April.

The Court: But he has the right to rely upon the possibility that when the witness sees the letter that he will have some recollection of it and, therefore, he isn't limited to what Mr. Mills says. That is the difficulty with the objection.

Mr. Renfrew: Your Honor, I can't follow the

(Testimony of Jack Conrad Anderson, Sr.)

line of reasoning, but I will certainly gladly give the man anything that we have on it. [280]

The Court: Well, it may be that the cross-examination on this point will be entirely unproductive, but nevertheless counsel is entitled to cross-examine on it.

Mr. Boochever: It is the letter of May 17th I am referring to.

Q. Now, Mr. Anderson, will you look at the first paragraph of that letter, please? Does that refresh your memory so that you can recall that this money was turned over to your account on April 22, 1947?

A. I am sorry, but how can I tell you that I know this when I never seen the check? I didn't know when they did it or anything about it. I never had nothing to do with it.

Q. You never had anything to do with it?

A. Nothing to do with that check or anything. All I done was they made an agreement with the bank up here what to do with the money. I sent a wire to Mr. Wells, at that time president of the bank or whatever he was, and he made all the connection with Mr. Owens' attorneys. I don't know whether they sent the check yesterday or ten days ago.

Q. Weren't you notified?

A. I was not notified when they sent it or anything about it.

Q. The bank didn't give you a notice?

A. Not a thing. The bank never gave me anything.

(Testimony of Jack Conrad Anderson, Sr.)

Q. You don't know when that was? [281]

A. That is right. I don't know anything about it. I am sorry.

The Court: Well, you didn't make any inquiries at the bank yourself to find out if any credit of that kind had been given?

A. I am sorry, your Honor. I did write a letter, I believe, to Mr. Wells and I said, "The whole thing is in your hands, and I hope that the bank can act accordingly and see that the payments are credited to us in the proper manner," or something to that effect, but I never heard whether they got the money or anything else.

The Court: Well, suppose the money hadn't been paid under the arrangement that you made with the bank; would you have been notified, or do you know? A. Yes, sir.

Q. You never wrote back to Mr. Mills and said that money wasn't paid on April 22, 1947, did you?

A. I recall one thing. At one time there was some dispute over a check been lost or delayed or something. I don't remember what it was about, but I recall there was a dispute over that the bank didn't get the money.

Q. That wasn't the original five-thousand-dollar payment though?

A. I don't remember what it was. I recall that they didn't get the money.

Q. Now, you state that you left Seattle on June 3, 1947; is [282] that right?

A. That is right.



(Testimony of Jack Conrad Anderson, Sr.)

Q. And when did you arrive in Anchorage?

A. Oh, say about, oh, it takes us probably eight days, I guess, something like that.

Q. What kind of a boat did you have then?

A. Had a power scow.

Q. And self-propelled? A. Yes, sir.

Q. And that is what you went up in; is that right? A. Yes, sir.

Q. And you made the trip in eight days?

A. Well, I don't know. It depends on the weather. I would have to have the logbook. Eight or nine days; the best we have made is about eight days.

Q. Now, until you got to Anchorage, I believe you testified, you never heard from Mr. Owens or Mr. Mills complaining about this transaction; is that right?

A. Let's see, now; no, I think—let's see—something took place. I made a trip to Anchorage for some reason. Excuse me, your Honor; I want to think. On this particular power barge we had a lot of steel for the Road Commission, and it would delay me sometime to get up, and I had to come up on some business. I flew up to Anchorage. What date that was done, I don't know. I believe I left from [283] Seldovia. I am sure I left from Seldovia. My son took the barge up to Kenai. And when I got up to the bank there, I was informed in the bank about some trouble, misrepresentation.

Q. That was the first you heard about any complaint about misrepresentations, is that right, after

(Testimony of Jack Conrad Anderson, Sr.)

you were here in Anchorage? A. Yes.

Q. That was about June 11th; is that right?

A. I know I wrote Mr. Owens a letter about it. I think I went back. Came up one day. We chartered a plane and went back down again, and I wrote Mr. Owens a letter, and it was the first part of June.

Q. Now, isn't it true—well, you left on June 3rd, didn't you?

A. Yes. The 10th or 11th or——

Q. The 10th or 11th when you were up here in Anchorage; isn't that right? And that is the first time you ever knew that Mr. Owens had complained; that was your testimony yesterday, wasn't it? A. Yes.

Q. And that was the first time? Are you sure of that?

A. I am not sure. I can't remember. That was four years ago, and I can't say that I am sure because I am not sure.

Mr. Boochever: Well, now, I would like to look at [284] that letter of June 11th from Mr. Anderson.

Q. Here is your letter of June 11th. It is in evidence as Plaintiffs' Exhibit No. 20, and you stated, "Dear Mr. Owens:"—this is June 11th, written at Seldovia. A. That is right.

Q. That is where you came to from Seattle?

A. That is right.

Q. All right. You said, "We planned on stopping in to see you, but due to the delay in the

(Testimony of Jack Conrad Anderson, Sr.)

shipyard and therefore late in getting loaded, we went straight out from Queen Charollette Sound to Cook Inlet." That is what you said in this letter of June 11th. You left on June 3rd and you went straight out from Queen Charollette Sound to Cook Inlet; that is correct? Is that right? A. Yes.

Q. All right. Then you state, "Our main reason for wanting to see you was to talk over the difficulties you are having with the tug." You can look at this yourself. A. Yes.

Q. How did you know they were having difficulties with the tug if they hadn't notified you about it?

A. When I was down aboard the tug and got this lifeboat, I met the party in charge on board the tug, and he told me that they had some difficulty with the crankshaft, that they were removing the crankshaft or something. [285]

Q. Now, that is the way you knew about it, and that is the only way; is that right?

A. That is right.

Q. And because he said that they were having some difficulty in removing the crankshaft, you were going to talk to Mr. Owens, and that was why and not because Mr. Owens told you that you had misrepresented and that he wanted some restitution; is that correct?

Mr. Renfrew: Your Honor, has there been any testimony here that Mr. Owens told him, that he had talked to him and wanted some restitution?

Mr. Boochever: I am asking the question.

(Testimony of Jack Conrad Anderson, Sr.)

Mr. Renfrew: Well, but Mr. Owens denied that he ever talked to him. There isn't any evidence before the Court that—

Mr. Boochever: I will make that, Mr. Owens or through Mr. Mills, his attorney, if that will satisfy counsel.

Q. In other words, you claim you hadn't heard from Mr. Owens or Mr. Mills, his attorney; is that right? A. I can't remember.

Q. You can't remember. Yesterday you could remember, couldn't you? Yesterday you stated definitely that the first you knew about any difficulty with the tug was when you came in Anchorage and picked up a letter at the Anchorage bank; isn't that right? Don't you remember that? [286]

A. I do.

Q. That is what you said yesterday; is that right? A. That is right.

Q. But today you don't remember; is that right? Is that right, sir? A. That is right.

Q. Now, with counsel's indulgence I would like him to again show you the letter of May 17th written by Mr. Mills to you. Will you look to see where that letter was addressed? Will you read that, please?

A. It was addressed to Olson & Winge Marine Works.

Q. Where? What city? A. Seattle.

Q. That is where you were getting your mail, isn't it? A. That is right.

Q. What is the date of the letter?

(Testimony of Jack Conrad Anderson, Sr.)

A. May 17th.

Q. To whom was it addressed to?

A. To Jack C. Anderson, Jr.

Q. And you didn't know anything about that letter; is that right?

A. Jack Anderson, Sr., too, also. I can't recall that.

Q. All right. That is all I want the letter for right now. Now, Mr. Anderson, in regard to this lifeboat now, you say you had a conversation with Mr. Owens about borrowing it; [287] is that correct?

A. That is right.

Q. Where did that conversation take place?

A. That took place—we discussed it in the yard. We discussed it at Olson and Wing's Yard, and we further discussed it in the car going in and—I don't know how it came about—and probably also in the hotel, Hotel Washington.

Q. Now, that was shortly after you sold the vessel to him; isn't that right?

A. I don't believe the deal had gone through yet.

Q. It was before the deal went through that you made arrangements to borrow the lifeboat?

A. I can't recall that, but I know I asked him about the lifeboat and I asked him if he was going to use the lifeboat, and in the discussion we got talking about that—he asked the requirement of a lifeboat, and I also told him, I said, "If you are not handling freight and passengers, all you need

(Testimony of Jack Conrad Anderson, Sr.)

is a lifeboat for the crew." Well, he said he wouldn't need it because there wasn't too much room there and he was going to put a work boat on there.

Q. And he agreed that he would let you borrow it at that time; is that right?      A. Yes, sir.

Q. And what was the agreement about returning the lifeboat?

A. I told him, I said, "I have got a lifeboat in Seldovia and [288] I would like to use the boat going north." He said, "That is O.K., and then when you come out why bring the boat back here, and sometime when we come to Seattle I will pick the lifeboat up on a trip to Seattle," or something to that effect.

Q. Something to that effect?      A. Yes.

Q. And you saw Mr. Blanchard afterwards, didn't you?      A. Yes.

Q. And you borrowed the lifeboat directly from Mr. Blanchard, didn't you?

A. I didn't borrow the lifeboat from Mr. Blanchard. I told Mr. Blanchard I came over to get a lifeboat and made an arrangement with Mr. Owens.

Q. And did you tell Mr. Blanchard that you had made arrangements to borrow it so you could clear Seattle and would leave the lifeboat off at Mr. Owens' camp?

A. No, sir. I could not make those statements. Pardon me for explaining, but how could I take a lifeboat out of here and go out to sea and then

(Testimony of Jack Conrad Anderson, Sr.)

throw the lifeboat off halfways and then keep on going without a lifeboat the rest of the way?

Q. I am not here to answer questions. But you were interested in clearing the Port of Seattle, weren't you?      A. That is right. [289]

Q. Now, Mr. Anderson, when did you come back down with that lifeboat?

A. The following fall.

Q. That would be the fall of 1948?

A. That is right.

Q. About a year and a half later; is that right?

A. A year and a half later? I mean the next year, or that same year in the fall.

Q. About six months later then?

A. We have got to be inspected every year.

Q. So it would be about six months later; is that right?      A. That is right.

Q. When you went down?

A. That is right.

Q. And at that time where did you leave the lifeboat?

A. I left the lifeboat off at Olson and Wing Shipyard.

Q. Did you write Mr. Owens about that?

A. No, sir.

Q. Did you write Mr. Mills about that?

A. No, sir.

Q. You didn't do that. Just left the lifeboat there; is that right?      A. That is right.

Q. Now, prior to that you had received word, hadn't you, that they demanded that lifeboat and

(Testimony of Jack Conrad Anderson, Sr.)

wanted to know why [290] you hadn't returned it, didn't you?      A. Yes, I believe I did.

Q. Did you ever answer that?      A. No, sir.

Q. Did you ever tell them you returned the boat?      A. I don't remember.

Q. Did you ever say anything to them that, "I have the boat still up here but I will return it to you"?

A. No. When I brought the boat in there, I figured he would probably do as he said, he would just go in there and pick the boat up.

Q. So, in spite of the fact that you had a demand for the lifeboat, you never made any reference to it at all, and yet some six months after you borrowed it you put it back there at Olson and Wing, never saying a word, and all the time that this case has been pending for two years you never said a word about it; is that right?

A. That is right.

Q. And you expect us to understand that you thought you were returning the lifeboat to Mr. Owens; is that right?

Mr. Renfrew: I object. That is an improper question, "And you expect us to understand"; that is a statement; that isn't a question.

The Court: Well, it is argumentative.

Mr. Boochever: I will withdraw it. [291]

Q. Actually, Mr. Anderson, you got a letter from Mr. Mills dated July 24, 1947, didn't you? I will ask your counsel to show you that letter, please.

Mr. Renfrew: I don't object to this, your Honor,



(Testimony of Jack Conrad Anderson, Sr.)

excepting that it is improper cross-examination. We didn't go into these letters on direct examination.

Mr. Boochever: You went into the lifeboat.

The Court: Objection will have to be overruled.

Q. Now, if you will refer to the last page of that letter, please, Mr. Anderson. Now refer to the second paragraph from the end. Mr. Mills wrote you and stated: "In addition to these matters, Mr. Anderson borrowed from Mr. Owens a lifeboat off the TP 100 in order that he might get clearance of his vessel from Seattle, promising to return the lifeboat on his way to Anchorage. This he has failed to do, and demand is made for the immediate return of the lifeboat." Do you see that portion of the letter?

A. That is right.

Q. And you got that letter, didn't you? Did you ever say anything, write Mr. Mills, or say, "This wasn't the agreement; I wasn't to leave it on the way up to Anchorage"? Did you ever say anything like that?

A. No, sir.

Q. You never did anything about it except six months later approximately, after you got it, you left it at Olson and [292] Wing; is that right?

A. Well, I figured it was necessary, or I mean, if you tell me to do something and I done it, I figured I done what was right; I brought the boat back as you told me to do and——

Q. Now, refer to the last paragraph of that letter. Mr. Mills stated, after this about the lifeboat, he stated: "Request is made that this letter be given

(Testimony of Jack Conrad Anderson, Sr.)

your earliest possible consideration and that you advise this office as to your determination in the matter, as we are under instructions to forward the claim for immediate action unless a compromise can be effected." Now, did you make any reply to that at all?

A. I can't recall whether I did or not.

Mr. Boochever: That is all.

### Redirect Examination

By Mr. Renfrew:

Q. Now, Captain Anderson, you have the letter of July 24th before you. How is that letter addressed?

A. Addressed Mr. Jack C. Anderson, Seldovia, and Mr. Jack C. Anderson, Jr., Seldovia, and Seattle National Bank—or First National Bank of Anchorage.

Q. And do you know when you received that?

A. No, sir. [293]

Q. Do you have any idea where you were in July of 1947?

A. No. We travel all over Alaska to the westward, and our work is any place.

Q. Now, I call to your attention the letter of May 17th that Mr. Boochever has asked you about, in which you read the address. Now, will you read the full address? Start in at the top and read the whole address.

A. "Mr. Jack C. Anderson, Jr., c/o Olson &

(Testimony of Jack Conrad Anderson, Sr.)

Winge Marine Works, 4125 Burns Ave. N.W., Seattle, Washington. Mr. Jack C. Anderson, Sr., c/o First National Bank of Anchorage.”

Q. Now, is that the letter that you got from the First National Bank of Anchorage when you came to Anchorage in the fore part of June?

A. I believe this is it; yes.

Q. And is that the first word that you received in connection with any claim for misrepresentation of the vessel?

A. That is right.

Q. And now, when you referred in your letter of June 11th to the fact that you wanted to stop and see Mr. Owens on your way north, were you referring to——

Mr. Boochever: Wait a second. I don't want counsel to lead. He can ask him what he was referring to but not “were you referring to” some specific thing.

The Court: Yes. I think it is objectionable as leading. [294]

Mr. Renfrew: Well, I hadn't asked the question.

Mr. Boochever: I know it, but you started in a leading form which would suggest the answer, and I objected before you started.

Mr. Renfrew: Well, that is kind of you, counselor, but I still don't think my question would be leading. May I proceed with it?

The Court: Well, usually it is improper to object until the question is concluded, but this

(Testimony of Jack Conrad Anderson, Sr.)

question, so far as it has gone, shows itself to be leading.

Mr. Renfrew: Well, maybe so. I will try and reframe it then, your Honor. I never heard one called leading though until it was asked.

Q. Mr. Boochever asked you why you expected to stop on the way north, if you had had time, and see Mr. Owens about the trouble he was having with the boat. Now, as I understood your answer to that—if I am wrong now, correct me—but, as I understood your answer, you stated that it was because of the difficulty you saw them having, getting the crankshaft out of the tail of the boat, at the time that you went to pick up the lifeboat.

A. That is right; and talking to the chief engineer, and he said they had cut the hatch coaming and things in order to get it out, and I believe, yes, I know I made a statement to him when we were there taking the lifeboat that [295] it should have been taken up through the fiddley and remove the stack.

Q. Now, when you received this letter of July 24th, whenever it was, I want to call your attention to the third paragraph from the bottom.

Mr. Renfrew: Your Honor, since I don't have the advantage of having a copy of this, I am going to have to stand here and read it to him like Mr. Boochever did.

Q. "For the purpose of an immediate compromise and settlement, and for that purpose only,

(Testimony of Jack Conrad Anderson, Sr.)

and without prejudice to the right of Mr. Owens to"——

Mr. Boochever: Well, now, wait a second. If counsel wants the entire letter in, that is all right, but I don't think it is proper for him to produce an offer of compromise which is made without prejudice if he puts this part of the letter in.

Mr. Renfrew: Your Honor, I am not doing it for that purpose, and counsel well knows it.

The Court: Well, even though it would be an exhibit, the Court will disregard it.

Mr. Renfrew: May I proceed, your Honor?

Q. "and for that purpose only, and without prejudice to the right of Mr. Owens to assert his claim for damages to its fullest extent in the event of litigation, Mr. Owens is willing at this time to accept the sum of \$10,000.00, and [296] if desired, is agreeable that such amount be credited as an offset against the last \$10,000.00 falling due on account of the purchase price of the vessel. In this connection we have advised Mr. Owens that by reason of the notice and knowledge to the First National Bank of Anchorage of the terms and conditions of the sale and the consideration for the promissory note, that any claim for damages constitutes a failure to that extent of consideration and is a proper offset against the promissory note and mortgage." Now, when you got that letter did you consult an attorney? Whenever it was received by you, did you then consult an attorney?

(Testimony of Jack Conrad Anderson, Sr.)

A. Let me see the other part of this letter here. I believe this is a letter I sent to you at Anchorage.

Mr. Renfrew: Now, at this time, your Honor, since the Court has heard these letters from one end to the other, I am going to offer them in evidence.

The Court: Any objection?

Mr. Boochever: No objection.

The Court: They may be admitted.

Mr. Renfrew: That is the letter of May 17th and the letter of July 24th.

The Clerk: Defendants' Exhibits B and C.

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### DEFENDANTS' EXHIBIT B

Chadwick, Chadwick & Mills

Attorneys at Law

Suite 656 Central Building

Seattle 4

May 17, 1947.

Mr. Jack C. Anderson, Jr.

c/o Olson & Winge Marine Works,

4125 Burns Ave. N.W.,

Seattle, Washington.

Mr. Jack C. Anderson, Sr.,

c/o First National Bank of Anchorage,

Anchorage, Alaska.

Gentlemen:

Mr. A. E. Owens, on behalf of Owens Brothers, has consulted with us with reference to misrepre-

(Testimony of Jack Conrad Anderson, Sr.)

sentations made in connection with the agreement of sale of April 1, 1947, covering TP-100 and the consummation of such sale on April 22, 1947.

Mr. Owens advises that as a representation and as an inducement to him to make the purchase of the said TP-100, it was represented by you that the TP-100 was in good condition and first-class shape, with the following exceptions:

(1) That one crankpin was scored;

(2) That the boat had at some time been grounded and that some minor repairs were needed to the forefoot.

In connection with representation (1) Mr. Owens advises that it was specifically represented by you that the rest of the bearings and the engine were in good shape.

In connection with representation (2) Mr. Owens advises that on several occasions representations were made that the damage from grounding was not extensive and that there were no leaks in the hull.

On tearing down the engine for the purpose of repairing the one scored crankpin it has been determined that all of the main bearings are melted, with the babbitt melted out and that the shaft has been run on bare metal, scoring and badly twisting the shaft and necessitating the installation of a new shaft. On a survey of the hull of the vessel it was found that there was a bad leak in the forepart of the vessel, with water standing in the water-

(Testimony of Jack Conrad Anderson, Sr.)

tight compartment to a depth of four feet, and upon hauling the boat out of the water it has been ascertained that the forefoot has been extensively damaged, requiring complete replacement, and that the forefoot was driven back into the keel, necessitating extensive repairs to the keel of the vessel, and that the forefoot and hull had been badly smashed and were leaking extensively.

The extent of the damage has not yet been ascertained, but a preliminary estimate indicates that it will take in excess of \$10,000.00 to repair the engine and in excess of \$7,000.00 to repair the forefoot, keel and hull, and that in addition the vessel will be laid up for a period of at least one month for such repairs.

This letter is to advise you that Mr. Owens will look to you in damages for the cost of making such repairs to the forefoot, hull and keel, and for the costs of repairing the engine, as they exceed the sum of \$5,000.00 which is the figure which he advises you represented it would take to put the engine in first-class condition.

Very truly yours,

CHADWICK, CHADWICK &  
MILLS,

By /s/ ORVILLE H. MILLS.

OHM:B

Admitted in evidence March 9, 1951.



(Testimony of Jack Conrad Anderson, Sr.)

DEFENDANTS' EXHIBIT C

Chadwick, Chadwick & Mills

Attorneys at Law

Suite 656 Central Building

Seattle 4

July 24, 1947.

Mr. Jack C. Anderson,  
Seldovia, Alaska;

Mr. Jack C. Anderson, Jr.,  
Seldovia, Alaska;

The First National Bank of Anchorage,  
Anchorage, Alaska.

Gentlemen:

Mr. A. E. Owens, while in Seattle, has handed us the letter of June 11 written by Mr. Jack C. Anderson. Having addressed Mr. Anderson with a claim for damages by reason of misrepresentations and breach of warranties in connection with the sale of the vessel, T.P.100 in May, it was our understanding from him that on his trip back to Anchorage, he would stop by and confer with Mr. Owens in an endeavor to reach an amicable adjustment or understanding with reference to the claim. Unfortunately Mr. Anderson failed to do this.

In connection with the sale of this vessel, there was a definite representation that with the exception of one scored crankpin and a slight damage to the forefoot of the vessel, that the vessel was in first class shape and that \$5,000.00 would cover

(Testimony of Jack Conrad Anderson, Sr.)

any necessary repairs to the vessel. There was a further definite representation that the vessel was not taking any water. These representations were made in the presence of Mr. Owens, Mr. Tom Morgan, Mr. Les Hodgins and Mr. H. A. Dent.

Even to the date of his last conversation with us, Mr. Anderson firmly insisted that the vessel had only been shaken up in striking a floating log on the way down from Alaska and that the vessel had not struck a rock or been grounded.

We have personally examined the Log of the T.P.100 and find the entry, under date of February 11, 1947, showing that the boat struck a rock on the way down from Alaska, and in addition, this fact has been confirmed by a member of Mr. Anderson's crew. Upon hauling the vessel out of the water, it was apparent that the damage to the forefoot and keel had been occasioned by the striking of the rock.

Repairs of the vessel are now substantially completed and have required the repair of the forefoot, keel and hull at a cost of \$8,620.43.

On taking the engine down, it was ascertained that the crankshaft had been badly burned, warped and twisted, requiring entire replacement for which Owens has now paid \$6,356.66.

In addition, as a result of the collision, it was ascertained that the shaking of the boat had caused short circuits which had torn the batteries down, requiring their overhaul at a total expense of \$650.00.

(Testimony of Jack Conrad Anderson, Sr.)

The tail shaft was badly scored and oxidized, requiring a complete new installation at a cost of \$1,222.04.

In addition to these items, Mr. Owens has disbursed \$2,509.00 for men engaged by him for the work in connection with the repair of the vessel and has incurred a sum which he now estimates at \$5,000.00 on account of engine overhaul. Accordingly, the total repairs necessitated now amount to \$24,358.13 as against Mr. Anderson's assertion that the boat would be in first class shape upon the expenditure of \$5,000.00 for repairs. Accordingly, Mr. Owens will look to the sellers for reimbursement to the extent of \$19,358.13 as damages by reason of misrepresentation and breach of warranty in connection with the sale of the vessel.

For the purpose of an immediate compromise and settlement, and for that purpose only, and without prejudice to the right of Mr. Owens to assert his claim for damages to its fullest extent in the event of litigation, Mr. Owens is willing at this time to accept the sum of \$10,000.00, and if desired, is agreeable that such amount be credited as an offset against the last \$10,000.00 falling due on account of the purchase price of the vessel. In this connection we have advised Mr. Owens that by reason of the notice and knowledge to the First National Bank of Anchorage of the terms and conditions of the sale and the consideration for the promissory note, that any claim for damages constitutes a failure to that extent of consideration

(Testimony of Jack Conrad Anderson, Sr.)  
and is a proper offset against the promissory note and mortgage.

In addition to these matters, Mr. Anderson borrowed from Mr. Owens a lifeboat off the T.P.100 in order that he might get clearance of his vessel from Seattle, promising to return the lifeboat on his way to Anchorage. This he has failed to do, and demand is made for the immediate return of the lifeboat.

Request is made that this letter be given your earliest possible consideration and that you advise this office as to your determination in the matter, as we are under instructions to forward the claim for immediate action unless a compromise can be effected.

Yours very truly,

CHADWICK, CHADWICK &  
MILLS,

By /s/ ORVILLE H. MILLS.

OHM:dl

Admitted in evidence March 9, 1951.

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Mr. Renfrew: I think that is all. No further questions. [297]

Recross-Examination

By Mr. Boochever:

Q. Now, I believe on your attorney's re-examination there, Mr. Anderson, that you stated that the

(Testimony of Jack Conrad Anderson, Sr.)

reason you wrote the letter of June 11th, after you had come up to Anchorage, to Mr. Owens was not because you had heard about his claim there, as indicated in that letter of his attorney, but because you had seen the crankshaft being removed and you wanted to talk to him about the proper method of removing it; is that right?

Mr. Renfrew: No; now, your Honor, that is an improper question, and I object to it. He says that he believes that is the answer that the witness made, and his recollection is entirely wrong.

Mr. Boochever: The witness can answer that.

Mr. Renfrew: Well, that is improper, Mr. Boochever, for you to make a statement to the witness when that isn't the question nor the answer, and I rely upon the record. That was his reason for making the statement in the letter, that he expected to stop on his way north, if he had had time, to talk to him about the trouble he was having with the boat, and counsel brought that out on cross-examination. On recross he made the same answer that he made to him on cross. And now he is going back into it and trying to have him say that that is the sole reason that he wrote the letter. Now, there [298] is evidence in the record, and plenty of it, that he wrote that letter after he flew from Seldovia, from coming north in the boat to Seldovia, flew to Anchorage, got the letter from the bank here and went back to Seldovia and answered it.

The Court: As I understand it, the principal

(Testimony of Jack Conrad Anderson, Sr.)

ground of your objection is that the question assumes something not in evidence?

Mr. Renfrew: Absolutely, your Honor. He is assuming some statement that the witness didn't make at all. While there is nothing dumb about the witness, it is apparently his first experience in court and he is confused by counsel's insinuations.

The Court: There is a good deal of difference between assuming something that is not in evidence and understanding something that is in evidence, and counsel's question evidently may arise from a misunderstanding of the evidence, but that doesn't make it improper. The objection will be overruled.

Q. Mr. Anderson, what I was trying to get at is, why did you write that letter of June 11th? Did you write it because you wanted to see Mr. Owens about that crankshaft being removed or because you had been informed by Mr. Mills of the difficulties in regard to the boat?

A. I wrote that letter when I came back down from Anchorage. We flew down. We had a plane here, and I flew up and flew [299] back down again, and I discussed the matter with my son, and we wrote him a letter at that time. Now, what the exact reason was—but I know I had some knowledge of it anyway.

Q. In other words, you came up to Seldovia and flew over to Anchorage, flew back to Seldovia, and then wrote the letter; is that right?

(Testimony of Jack Conrad Anderson, Sr.)

A. I believe we wrote the letter in Seldovia; as a matter of fact, I am sure we did.

Q. Did you go back and forth on the same day from Seldovia to Anchorage? A. Yes, I did.

Q. And you wrote the letter the same day?

A. It was a hurry-up trip. There was a reason for it. If I had my logbooks and things, I could probably check on it. I know I couldn't get up here for quite sometime on account of the steel bridge we had on board the power scow.

Q. Now, you say that you wanted to discuss this removal of the crankshaft through the stack; is that right? A. I didn't say I wanted to.

Q. You did want to?

A. No; I didn't say that. I don't believe I said that. I said the proper way of taking the crankshaft out is through the stack. They had to cut out something in the coaming, in the hatch coaming there, in taking the shaft [300] out. They couldn't get clearance for it.

Q. How big is the stack on that boat?

A. It is a pretty big stack.

Q. You have to have a derrick to get it up?

A. A crane; yes.

Q. Quite an operation, isn't it?

A. Well, it isn't any more of an operation than taking the crankshaft out through the stern.

Mr. Boochever: That is all. Excuse me, your Honor, just a second. That is all, your Honor.

Mr. Renfrew: That is all.

## JACK CONRAD ANDERSON, JR.

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Renfrew:

Q. Will you state your full name, please?

A. Jack Conrad Anderson, Jr.

Q. You are a partner with your father in the operation of the Anderson and Son Transportation Company? A. Yes, sir.

Q. Do you hold any certificates?

A. I have a skipper's certificate; yes.

The Court: You mean master's?

A. Master's; yes. [301]

Q. You have heard most all of the testimony that has gone on in this case. Briefly, Mr. Anderson, when did you and your father purchase the TP 100, roughly?

A. It was March or April of 1946.

Q. Where was the vessel at that time?

A. Seward, Alaska.

Q. Was it on dry dock, on the ways or just laying in the water?

A. No, sir. It was in Thumbs Cove Bay, wet storage.

Q. Thumbs Cove Bay?

A. Thumbs Cove Bay. It is just a bight in the bay at Seward, Resurrection Bay.

Q. And when you say "wet storage," you mean in the water? A. Yes, sir.



(Testimony of Jack Conrad Anderson, Jr.)

Q. And was the vessel in operating condition at that time?

A. Well, she had been laid up by the Army, and we had to fix that—or my dad had to fix that one crankpin before he took her out. I don't know if he needed to, but he did.

Q. Was the vessel used by you people that year?

A. Yes, sir.

Q. Do you know when you took it out of Thumbs Cove?

A. We got the power scow first, and then I left with that and towed some barges around here. I don't know exactly the date my dad took it out.

Q. Well, could you give us a rough estimate? What month? [302]

A. March. No; it would be in April, I believe; the last part of March or the first of April.

Q. And then you used the vessel here in the Inlet for transportation during that summer?

A. Yes, sir.

Q. Now, do you know whether or not you had any trouble with it all summer long?

A. Oh, off and on with any boat like that you have minor repairs to do, and that one bearing gave them a little trouble, but they used that cylinder during the summer.

Q. And do you know the approximate time that it went south? I think it has been testified here as about February 10th.

A. Yes, sir. We both went down at the same time.

(Testimony of Jack Conrad Anderson, Jr.)

Q. And you were in charge of the power scow?

A. Yes, sir.

Q. And do you know of your own knowledge that they hung up this number three piston before they took off for the States?

A. Yes, sir. I was on the power scow, and I was laying in Seldovia getting gear and stuff aboard while they made this trip across, and I made an oil trip to haul some oil. I left Seldovia there while they done that and, when I came back, they had it done.

Q. Now, on the trip south did the power scow and the TP 100 go close together all the way?

A. Well, we started out, and they ran away from me. They made [303] better time than we did, so we slowed down and put the towline on the tug TP 100 on the power scow and towed it about three-quarters of the way across the Gulf, and we got in a storm out there and had to cut loose, and then they towed us again, after we got inside, several times.

Q. Were you anywheres in the vicinity when they ran into this rock or reef or shoal or whatever it was?

A. It was dark that night and snowing also, and I was quite aways behind.

Q. And do you know what happened immediately after that?

A. By the time I got up there he was laying still in the water. I came alongside, and they said they had a little trouble, and he said, "We

(Testimony of Jack Conrad Anderson, Jr.)

better not go any further tonight," so we went across, I believe it was Lynn Canal, to this Funter Bay. It was right across there, and anchored that night.

Q. And did you have an occasion at that time to look at the TP 100 and see if there was any damage or not?

A. We tried looking around as much as we could see. It was black at night, and we couldn't see much.

Q. What about the next morning?

A. Yes, sir. We looked at it the next morning. We could see a few slivers underneath the bow. Other than that why—I went down in the engine room, and there was no water in the engine room, so we went on. [304]

Q. And did you continue on together then to Ketchikan?      A. Yes, sir.

Q. And did the TP 100 assist you any more with tows?

A. On and off when we got in these open spots, we did; yes, sir; but when we got in a narrow spot, why we ran separate.

Q. And subsequently you arrived in Seattle; is that correct?      A. Yes, sir.

Q. And where did you dock there?

A. The first night we docked at Ballard Fishermen's Dock, and I believe it was the next day or two we went over to Olson and Wing's.

Q. And was the power scow and the TP 100 together when you were at the Fishermen's Dock?

(Testimony of Jack Conrad Anderson, Jr.)

A. Yes, sir, both places, all the time. We had both the boats together at all times.

Q. I see. Now, did you become acquainted with Mr. Owens shortly thereafter or sometime within the next month or so?           A. Yes, sir.

Q. And how did you become acquainted with Mr. Owens?

A. He was down on the dock. There were several people around there on the waterfront looking at these surplus boats, and he happened to be one of them that came down and looked. The first time I believe I seen him he was on the [305] boat, and we were putting a new galley range in the power scow, and I believe the first time I seen him that I can remember is he was on the stern of the boat.

Q. I got a little ahead there. Before you saw Mr. Owens, did you make any effort to determine the cost of the repair of the damage to the TP 100?

A. Yes, sir. "Squeaky" Anderson had a similar trouble with one of his boats, the Marine Greer, hitting a rock on the way down, and from what it cost them we determined from the shipyard, what we could see down in the water, it was a similar accident, and then that, and the yard wasn't very busy, and they wanted to do this work, and they said they would fix up the bow and the crankpin for about five thousand dollars, he said.

Q. Now, who was that?

A. Young Wing; I can't remember his first name.

(Testimony of Jack Conrad Anderson, Jr.)

Q. I mean, was that the Olson and Wing Dry Dock?      A. Yes, sir.

Q. And had they just completed the repairs on the Greer?      A. Yes, sir.

Q. And that was another vessel from Seldovia, was it?

A. That is "Squeaky" Anderson's boat; yes.

Q. Well, but the Court doesn't probably know "Squeaky" Anderson. Maybe he does.

The Court: I know him, but I guess I would have to [306] know his boat to be of any value here.

A. I believe it is a one-hundred-and-fifteen-foot boat, right around there; between one-hundred-and-ten and one-hundred-and-fifteen-foot.

Q. A larger boat than the TP was?

A. It was longer.

Q. Was it an Army Surplus boat?

A. Yes, sir.

Q. Now, were you there when you had any conversation; when your father had any conversation with Mr. Owens, were you present?

A. Yes, sir. I showed him around this day that he came down, and he looked around the boat. I don't know if my dad was down there right then or not; and Harry Saindon and I and, I believe, another crew member were putting in this galley range, and I thought Harry Saindon went up to the bow. We showed him down where he could see in the water. It was murky, but you could see down there where there were splinters sticking out of the bow where the bow had been damaged, and we

(Testimony of Jack Conrad Anderson, Jr.)

showed him that, and we told him one piston was haywire and the crankpin, or web journal or whatever you want to call it, was haywire and had to be fixed, turned down. It was rough, so it wouldn't hold the bearing, so we had to turn it down and put in a new bearing or have the bearing [307] rebabbitted.

Q. Now, did you ever see Mr. Owens again?

A. Yes. He was down several times, and my dad talked to him more than I really did. This one day Harry Saindon and I and my dad were up there when this phone call came through from Canada while all three of us, or four of us rather, were standing out there then.

Q. On the dock?

A. Well, it was between the warehouse and the office. They have this loud-speaker system all around the shipyard there.

Q. How do you know that that was a phone call from Canada to your father?

A. My dad said so.

Mr. Boochever: I object to what his dad said.

The Court: Yes.

Q. Well, do you know any other way that what your father said?

A. Yes, sir. We were dealing with this Canadian firm, and my dad didn't know which way to turn, whether we should sell it to Mr. Owens. We were sweating it out for this Canadian firm to call us back, and we didn't know for sure whether Mr. Owens was coming back to get it either.

(Testimony of Jack Conrad Anderson, Jr.)

Q. Do you know whether or not Mr. Owens was there when that took place?

A. Yes, sir. All four of us were standing out there. [308]

Q. And do you know when the deal was agreed upon, that it be sold to Mr. Owens?

A. Yes, sir. My dad came back out then and said that he was going to go up and make a deal with Mr. Owens.

Mr. Boochever: I object to what his father said unless it is shown that it was in the presence of Mr. Owens.

Mr. Renfrew: It was in the presence of Mr. Owens. He said definitely Mr. Owens was there.

Mr. Boochever: I still make my objection.

Mr. Renfrew: I guess we are waiting for your Honor to rule.

Mr. Boochever: I have objected, your Honor, to anything that his dad said unless it is shown that it was in the presence of Mr. Owens.

The Court: Well, I thought that obviated a ruling by the Court, unless it is shown to be in the presence of the plaintiff.

Mr. Renfrew: I maintain he has said so.

Mr. Boochever: Well, I don't think it is up to counsel to testify for his witness. He can ask his witness that if he wants to.

Mr. Renfrew: I asked him, and he has said, "Yes." I can't keep counsel from objecting, your Honor.

The Court: Well, you mean that he has already

(Testimony of Jack Conrad Anderson, Jr.)  
testified that the plaintiff was present? [309]

Mr. Renfrew: Yes. He said that Mr. Owens was standing right there.

Mr. Boochever: Well, your Honor, my recollection may be wrong, but my recollection is he said the "four of us" were there and then the phone call came, and then he said, "Dad came back and told me." Now at that point I don't know whether Mr. Owens was with him or not.

Q. Now, you understand, Mr. Anderson, that Mr. Boochever has objected and that the rule of law is that you are not to testify to anything that anyone said to you excepting in the presence of Mr. Owens who is sitting to Mr. Boochever's right over here on the end. Now, just before he made the objection a moment ago, I asked you if Mr. Owens was there. What was your answer?

A. Yes, sir. My dad and Mr. Owens came back out of this dry dock office there. We were standing right outside there, Harry Saindon and I, and my dad said that——

Q. That is all right now. You can say what your dad said as long as Mr. Owens was there.

A. He said then he was going to make the deal with Mr. Owens.

Q. Now, had you ever heard any conversation between your father and Mr. Owens at that time or at any previous time as to what the terms of the deal were?

A. Yes, sir. That was previous to that time



(Testimony of Jack Conrad Anderson, Jr.)

they were talking about whether we should fix the boat up, fix this [310] crankpin, or web journal or whatever you want to call it, up and the bow, or they were going to do it, and that is where the question was previous to that time.

Q. Now, was that in a conversation in which you were present and you heard Mr. Owens and your father discussing it?           A. Yes, sir.

Mr. Boochever: I believe that is repetitious, your Honor.

Mr. Renfrew: Well, your Honor, I can't possibly proceed with this examination and get it over with if counsel is going to object every time I make a suggestion. I am trying to hurry it up, not trying to delay it. I can stay here and object and delay this thing for weeks now. I am getting a little disgusted with this. If it was a trial before a jury or something, your Honor, I would feel there was some merit in counsel's contentions, but I am only trying to speed the trial up, and I hope the Court knows that.

The Court: On the other hand, even without a jury, I can't stop counsel from making an objection.

Mr. Renfrew: I realize you can't stop him, your Honor, but I thought perhaps you might explain to him that this is a matter just before the Court. He apparently thinks there is a jury here some place.

Q. Now, would you repeat any conversation, as near as you can, that you heard between your

(Testimony of Jack Conrad Anderson, Sr.)

father and Mr. Owens [311] with regard to the purchase price of this vessel, or the terms of the agreement, let's say?

A. I don't get how you mean. What we finally decided on, or previous to that?

Q. Any conversations that you heard between your father and Mr. Owens when you were present, whether it was previous to this time or at this time, with regard to how you proposed to sell the boat to him or how he proposed to buy it or when they were dealing with the sale of the boat, what you heard, if anything?

A. It would be thirty thousand dollars, ten thousand dollars down and two thousand a month, if we fixed the boat, and then my dad gave him that alternative, or they take the boat as she was for twenty-five thousand, five thousand down and two thousand a month.

Q. Now, did you hear that conversation?

A. Yes, sir.

Q. And when was that, if you recall?

A. That was, I believe, that morning in front of the office out there.

Q. Well, now, after this telephone call came in, was there any discussion then that you overheard as to which way Mr. Owens was going to buy the boat?

A. Not in the presence of Mr. Owens. My dad said——

Mr. Boochever: I object. [312]

(Testimony of Jack Conrad Anderson, Sr.)

Q. If you didn't hear that discussion in the presence of Mr. Owens, why don't you state what it was. Now, did you at Mr. Owens' request remove the boat from its location at Olson and Wing's?

A. Yes, sir. We went up and signed these papers—I also had to sign them—in Mr. Chadwick's office, and Mr. Owens wanted the boat moved over to this other place, other dock, where he could get the work done, so he came down, and we started the engine up and so we put the heavy lines on the boat, direct reversible; we had to warm her up a little bit at the dock in order before you start out—we warmed her up a little bit at the dock for a little while; and then Mr. Owens wanted to know if I would run the boat over for him because he said he doesn't run a boat or something like that, wasn't a skipper on a boat or something like that—I don't remember the exact words—but he asked me to run it because he didn't want to run it in the lake, so I told him I would, so as soon as the engine was warmed up why we cut loose and went over there. He was up in the wheelhouse most of the time with me. I don't know whether he went down below at all or not. He was out on deck and looked around and was in the wheelhouse with me, but I stayed in the wheelhouse, and we talked over how she run and how she handled and so forth.

Q. Now, you signed papers in connection with the sale of this [313] vessel, did you not?

A. Yes, sir.

Q. And was that in Mr. Mills' office?

(Testimony of Jack Conrad Anderson, Sr.)

A. Yes, sir.

Q. And was Mr. Owens and your father present there at that time?      A. Yes, sir.

Q. Now, do you recall any telephone call coming into that office to your father at that time?

A. No, sir. I don't believe anybody knew we were up there.

Q. Is that the only time you were ever in Mr. Mills' office?

A. We had to go up a couple of times to get these papers signed. I believe we went up twice.

Q. You mean—was that after the sale was consummated, or rather after you agreed to make the sale but before it was consummated?

A. We went up there. It was all agreed on when we went up there. They were drawing up the papers then.

Q. You feel that you were there two times in Mills' office?      A. Yes, sir.

Q. And your father was there both times?

A. Yes, sir.

Q. Now, on either of those occasions do you recall any telephone call coming in to your father?

A. No, sir; not that I recall. [314]

Q. Now, were you present when—were you present or did you overhear any conversation between your father and Mr. Owens in connection with the borrowing of a lifeboat?

A. No, sir. I wasn't there when he borrowed it. When we first, after this conversation outside the dry dock, Harry Saindon and my dad and Mr.

(Testimony of Jack Conrad Anderson, Sr.)

Owens and I were out there; I couldn't recall all we talked about. They talked about everything on these boats and all that, and I don't recall whether the lifeboat was mentioned right then or not. It could have been, but Harry Saindon and I were talking because he was figuring on leaving for some place—I don't know—outside the State.

Q. You don't recall any conversation about the lifeboat at that time at all?

A. It could have been going on, and I didn't hear it.

Q. Now, were you present when the lifeboat was picked up?           A. Yes, sir.

Q. And now, how was that accomplished? Where was the lifeboat picked up?

A. They had this boat over where we delivered it at the Stikine Fish Company Dock, or whatever you call it, and just before we got ready to leave we needed this lifeboat, and it had been previously arranged. We were going over, but the engine on the power scow was taken down, and we couldn't go any sooner. As soon as we got the engine [315] overhauled we went over.

Q. What do you mean, shortly before you left?

A. I would say about four or five days. We went over and picked the lifeboat up and then went out of the lake and loaded up and left.

Q. I still don't know what you mean by leaving. Leave for where?           A. Alaska here.

Q. What was the day, if you recall, that you left for Alaska?           A. June 3rd, I believe.

(Testimony of Jack Conrad Anderson, Sr.)

Q. And then am I to understand that, when you said four or five days before you left, you meant you got the lifeboat four or five days before June 3rd?

A. Yes, sir.

Q. And do you remember—you say you were present when you went and got it?

A. Yes, sir.

Q. And were you present, or, do you know what ever became of that lifeboat? Did you take it to Alaska with you?

A. Yes, sir.

Q. And was it on the power scow all summer?

A. Yes, sir.

Q. And what became of it subsequently, if you know from your own knowledge?

A. Yes, sir. We brought it back to Olson and Wing and unloaded [316] it there that fall.

Q. When you came down in the fall?

A. Yes, sir.

Mr. Renfrew: Now, Defendants' Exhibit B; let me see the other letter too.

Q. Now, I hand you Defendants' Exhibit B and I ask you to look at the address on that letter. Where is that letter addressed?

A. "Mr. Jack C. Anderson, Jr., c/o Olson & Winge Marine Works, 4125 Burns Ave. N. W., Seattle, Washington."

Q. And there is also a further address, is there not?

A. Yes, sir. To "Mr. Jack C. Anderson, Sr., c/o First National Bank of Anchorage, Anchorage, Alaska."

(Testimony of Jack Conrad Anderson, Sr.)

Q. I will ask you to look that letter through, Mr. Anderson, and tell me if you ever received that letter at the Olson and Wing Shipyards in Seattle.

A. No, sir; I don't recall seeing this letter before.

Q. If you had gotten that letter in Seattle, wouldn't you have known it? A. Yes, sir.

Q. Now, did you or did you not get that letter?

A. No, sir; we never got a letter out there like this.

Q. And when was the first you ever knew of that letter?

A. When we came back up here. My dad flew up and came back down and said we were being sued for selling the boat. [317]

Q. Now, you say when he flew up. Flew up from where? A. Seldovia.

Q. Do I understand that you brought your boat back from Seattle to Seldovia and then he flew from Seldovia to Anchorage and back to Seldovia again?

A. Yes, sir; while we were unloading. We had quite a little cargo for Seldovia and, while we were unloading the cargo, he flew up here.

Q. Now, I hand you Defendants' Exhibit C and I will call your attention to the fact that the address on that is Seldovia, Alaska. Now, did you or did you not get that letter?

A. Yes, sir; this is the one. I think I got this letter and sent it up to you. I either sent it up

(Testimony of Jack Conrad Anderson, Jr.)

or my dad came up. I don't remember which. That is when we started in giving you the papers.

The Court: Well, you don't know what happened to the copy of the other letter addressed to you at Olson and Wing? A. No, sir.

The Court: If it was delivered to Olson and Wing, then Olson and Wing never forwarded it to you? A. That is possible.

The Court: Did they know your headquarters was Seldovia?

A. Out in Seattle most of our mail is sent to Anchorage. We [318] give our address, in Seattle we give it as Anchorage. Everybody know where Anchorage is.

The Court: Well, but that isn't my question. Did they know that your headquarters or home was in Seldovia? A. Yes, sir.

The Court: Then you don't know why they didn't forward it either by way of Anchorage or to Seldovia? A. No, sir.

The Court: If they received the letter, they must have overlooked doing anything with it, as far as you know?

A. Yes, sir. They did forward a lot of mail up to us at Seldovia.

The Court: But that letter was not among the mail forwarded?

A. No, sir; not unless it was later, when the mail got up here, and they had already found out about the letter, when my dad came up here; that was the first we found out was when he came up here.

The Court: That is all.



(Testimony of Jack Conrad Anderson, Jr.)

Mr. Renfrew: I just wish to call the Court's attention that a copy of this or an original went to the First National Bank at Anchorage; that is the letter of July 24th.

The Court: Yes, I know. But I just wondered why the other copy or original, whatever it was that was apparently addressed to them in care of Olson and Wing, never got to [319] its destination.

Mr. Renfrew: There is nothing on the—I wish to call the Court's attention—my question—there is nothing on the letter to indicate that there was ever a carbon copy at all. The letter does not show that a copy was ever even made.

The Court: Well, but it was addressed, as I understand it, to the defendant or defendants in two places, and presumably it couldn't have been addressed to them in two places if there was just one copy.

Mr. Renfrew: Your Honor, it could be addressed with a forwarding address. Your Honor can examine the exhibits by yourself, one letter, and it doesn't indicate that there was any copy that could possibly have been sent addressed one place with a forwarding address to the other; it is possible; since it doesn't show that there were any copies, that could have happened. I think that is all.

### Cross-Examination

By Mr. Boochever:

Q. Mr. Anderson, when did you arrive in Sel-dovia on that trip north?

(Testimony of Jack Conrad Anderson, Jr.)

A. That was a very fast trip in the middle of the summer, good weather, and we shot straight out from, I believe it was Queen Charolette, came straight across the Gulf.

The Court: Well, you don't need to mention anything [320] that happened in between time. Just say what time you arrived, if you know. The question is not what the weather was.

A. I would say about the 9th or 10th.

Q. About the 9th or 10th of June; is that right?

A. Yes, sir.

Q. And your father left immediately for Anchorage and came right back; is that right?

A. Yes, sir.

Q. And you left Seattle June 3rd, is that right, in the power scow? A. Yes, sir.

Q. And you arrived the 9th, and you took just six days to get up there?

A. It must have been seven days. It must have been the 10th.

Q. Your father, I believe, said the 11th?

A. We have made it in seven days.

Q. The 10th or 11th you arrived then?

A. Yes, sir.

Q. Now, you heard your father state that he wrote a letter June 11th to Mr. Owens. Did he discuss that letter with you and show it to you? This is the letter he wrote to Mr. A. E. Owens, June 11th, 1947.

Mr. Renfrew: I ask that he show the letter to the witness, your Honor.

(Testimony of Jack Conrad Anderson, Jr.)

The Court: Well, he is not asking him as to the [321] contents yet.

Mr. Renfrew: He asked him whether he discussed it with him.

Mr. Boochever: That is right.

The Court: Well, the letter has been discussed here in evidence. Do you remember the letter, or do you have to see it?

A. Well, my dad, when he came back, he told me what he found out when he got to Anchorage here and he was going to write a letter.

Q. Now, your dad states in that letter of June 11th: "We planned on stopping in to see you," to Mr. Owens, "but due to the delay in the shipyard and therefore late in getting loaded, we went straight out from Queen Charollette Sound to Cook Inlet. Our main reason for wanting to see you was to talk over the difficulties you are having with the tug. We had a letter from Mr. Mills stating that we misrepresented and induced you to purchase the TP-100, which no doubt you know we never did." Now, the only reason your dad stated—what was the reason your dad stated you were going to see Mr. Owens before you left Seattle?

Mr. Renfrew: Now, we object to that as argumentative and calling for a conclusion. He says, "What was the reason your dad" did this. How could he answer that? [322]

Mr. Boochever: I will reframe the question.

Q. Do you know the reason why your dad was going to stop and see Mr. Owens before you left Seattle?

(Testimony of Jack Conrad Anderson, Jr.)

A. It was common word through the grapevine in Seattle that they were doing all kinds of work to the tug. Everybody knew it on the waterfront. When a boat is getting fixed, everybody knows it.

Q. But you want the Court to believe that you had no word from Mr. Owens or Mr. Mills, that you hadn't received that letter of May 17th; is that correct? A. Not to my knowledge.

Q. Not to your knowledge?

A. I hadn't received that letter.

Q. In other words, your dad just wanted to see him because he heard through the grapevine that they were making repairs on the tug and wanted to see him?

Mr. Renfrew: Now, we object to this, your Honor, as calling for a conclusion as to why his father wanted to see him. He says, "In other words, your father wanted to see him because." It is opinion only.

The Court: Well, that would be a valid objection if it wasn't for the relationship of these two people. They are co-defendants here, aren't they, and are associated together there, so, if he knows, he may answer.

A. What was the question again? [323]

Mr. Boochever: I have forgotten it now. I will waive it. I think we have covered the point anyway.

Q. Now, you state that in regard to determining this five-thousand-dollar repair of the boat, you determined that is what it would cost to fix up the

(Testimony of Jack Conrad Anderson, Jr.)

cylinder, in your opinion, and the front end; is that right?      A. Yes, sir.

Q. And the basis for determining those damages and getting that estimate, you say, was because the boat yard had fixed up the vessel of "Squeaky" Anderson who had also struck a rock; is that right?      A. Yes, sir.

Q. Mr. Anderson, did you have the boat out on dry dock so that they could see the damage done by the rock?      A. No, sir.

Q. Are you implying then that all vessels, the same type of vessels, if they strike a rock, have the same type of damages?

A. No, sir. But we could look down through the water. In Lake Union it is fresh water. You could see down there and see more or less what it looked like. And he said about what it was going to cost; he didn't say exactly.

Q. In other words, you never did have it out on dry dock at that time to see the real extent of the damage?      A. No, sir. [324]

The Court: Well, did you have any information or knowledge of the kind of damage that was done to "Squeaky" Anderson's boat?

A. Yes, sir. We seen that on dry dock.

The Court: You saw that?

A. Yes, sir. And we seen the other one through the water; I mean, the way it reflects.

Q. And that was why you told Mr. Owens that it would cost just five thousand dollars to repair the boat?

(Testimony of Jack Conrad Anderson, Jr.)

Mr. Renfrew: Now, I object to this, your Honor. There isn't one shred of testimony that he told Mr. Owens anything.

Q. That you or your father—I meant to say.

Mr. Renfrew: And now, then, he is assuming that he knows why his father told him something, and it hasn't been testified even that his father told him. Now, that is improper cross-examination even if this man is a co-defendant.

The Court: Well, unless he was present at the time so that he would know what his father told him at the time——

Mr. Renfrew: But your Honor, he says "that is why your father told you that."

Mr. Boochever: I will rephrase the question.

Q. You heard your father tell Mr. Owens, didn't you, that it would cost approximately five thousand dollars to repair the vessel there; isn't that right? [325]

A. To do these two jobs; yes, sir.

Q. And those are the only two jobs that your father stated needed to be done on the vessel; isn't that right?

A. That is the only two jobs we agreed that would do her to put her in running condition. The engine was already running, but the one cylinder wasn't running, so we figured that that should be repaired and also the bow.

Q. And the agreement—you stated, I believe, you were present at one time when you discussed the terms; isn't that right?

A. Yes, sir.

(Testimony of Jack Conrad Anderson, Jr.)

Q. And at that time didn't you agree that you would make the repairs on the vessel and sell it to him for thirty thousand dollars, is that correct, as one of the terms?      A. Yes, sir.

Q. And in the alternative that Mr. Owens would make the repair on the vessel and it would be twenty-five thousand dollars; is that right?

A. Yes, sir; and he takes her the way she was.

Q. Now, you state that you went to get the lifeboat four or five days before you left Seattle; is that correct?      A. Yes, sir.

Q. That would be then about the very last day of May?      A. The last part of May; yes.

Q. May 29th, 30th, around in there; is that right?

A. Yes, sir; the last part of the month, within four or five [326] days.

Q. And you say it was at the Stikine Float that you picked up the vessel; isn't that correct?

A. Yes, sir.

Q. Mr. Anderson, don't you know that they moved the vessel from the Stikine Float prior to that in order to get it up on dry dock in the middle of May?

A. Yes, sir. I seen her when she was up on dry dock.

Q. And, therefore, you got it before it was up on dry dock, didn't you? You got the lifeboat?

A. No, sir; the boat was back over there again.

Mr. Boochever: That is all, your Honor.

Mr. Renfrew: That is all.

(Testimony of Jack Conrad Anderson, Jr.)

The Court: Well, now, this report that you heard, about the extent of repairs that were being made on the boat, through the grapevine, so-called, did that concern the fact that the repairs that were being made were extensive or was it concerned also with the fact that the condition of the boat made the repairs that extensive?

A. The way they were doing the work, why it either seemed like they didn't have a qualified man supervising the job or else they had oodles of money and didn't care how much it cost. Common waterfront talk; everybody talks about everybody's boats and, since we had that boat, why——

The Court: There wasn't anything in this grapevine [327] report to the effect that the plaintiff was complaining about the repairs that were necessitated?

A. No, sir. The only thing we knew was that he was taking the crankshaft out. The engine was already in running condition except this one there. If they put that other bearing in, he could have run the engine that way.

The Court: Well, then the impression created by this grapevine report was that they were extravagant in making repairs; was that it?

A. Yes, sir. They never tried running it the way we run it. We run her down on five cylinders. If they put the other one in, she would have still run.

The Court: Well, in other words, so long as it would run, why, in your opinion, that would be sufficient; is that it?



(Testimony of Jack Conrad Anderson, Jr.)

A. Yes, sir. It was in running condition. It is hard telling how long an engine like that lasts. If they take good care of it, it might last quite a while. It was in running condition when we took it over there. We showed him how it run on five cylinders. It run good.

The Court: Well, then from what you say all they had to do was to repair the journal and connect this cylinder up and they could keep on using the boat in that condition indefinitely?

A. Yes, sir; if they took good care of the engine and give [328] it plenty oil and stuff. Without oil, naturally it would burn up. If they had a competent engineer, why——

The Court: All the while you operated her, there was nothing in the operation of the engine that indicated the crankshaft was warped or out of line or anything like that?

A. No, sir. This one journal was scored and it had to be trued up, and it was such a big crankshaft we couldn't get a tool to fit around it.

The Court: Well, would it be correct to say then that even though a crankshaft is somewhat warped that it can be operated in that condition indefinitely?

A. Sir, there is no way of telling whether the shaft was warped, except taking it out.

The Court: But, I say, assuming it to be warped and if you knew that, would you still say that it could be operated indefinitely, that it would be all right to operate it?

(Testimony of Jack Conrad Anderson, Jr.)

A. No engine could be operated indefinitely, sir, without an overhang or overhauling. We overhaul our boats every year, annual overhaul.

The Court: Well, then am I to understand that the crankshaft could be warped and still that defect could not be detected by an experienced engineer when he listens to the engine running?

A. No, sir; you could not tell it from the engine running. [329]

The Court: Then, so far as anybody could discern, the only thing that could be wrong with the engine would be the journal itself?

A. Yes, sir. That definitely had to be worked on.

The Court: That is all.

Mr. Renfrew: That is all. Now, your Honor, with the exception of the depositions we wish to take, that concludes our case.

The Court: Have you any rebuttal?

Mr. Boochever: Your Honor, I wonder if we could have a few minutes' recess. If we can possibly avoid it, we will.

The Court: Well, I was just wondering if there is time left before noon.

Mr. Boochever: Well, I was hoping I might be able to end it before noon. If I could have about two minutes' recess just to talk with my fellow counsel here about the rebuttal and if it is possible to eliminate it, we shall.

The Court: I just thought that, if you couldn't

finish your rebuttal in any event before noon, why we could go over to 1:30; that is all.

Mr. Boochever: We do think we can get through by 1:30; we can without a doubt.

Whereupon Court recessed until called by counsel, reconvening as per recess, with all parties present as [330] heretofore; whereupon the trial proceeded as follows:

Mr. Boochever: Your Honor, we have a short rebuttal. I want to call Mr. Blanchard.

Mr. Renfrew: Your Honor, before we start with the rebuttal, Mr. Boochever just mentioned to me the question of argument. Now, if we are going to argue this thing, it seems rather foolish to me to continue at this time and then go and get a bowl of soup and then come back and argue. I am willing to do two things. I am willing to argue this matter on Monday if your Honor is inclined to stay over here and conclude the case, or I am willing that it be submitted on briefs after the testimony of the other witnesses is secured by deposition.

Mr. Boochever: I am willing to agree to either of those and, since I assume your Honor would prefer leaving Monday, why it is satisfactory to present argument on briefs after the depositions are taken.

The Court: Well, do you mean that you would sum up the evidence and argue it in writing; is that what you have in mind?

Mr. Renfrew: Yes.

Mr. Boochever: I also would be willing to waive argument.

Mr. Renfrew: Why don't we waive argument?

The Court: I would rather not have you waive argument. I think that you ought to sum up the evidence in the [331] way that you think it should be summed up, and usually counsel have certain points that they want to emphasize which they think has support in the evidence, and the Court might overlook some of those. I am always in favor of full argument of the evidence, particularly if counsel wish to argue it, and it is immaterial, however, whether you wish to do it in writing or orally, although, if it is done orally, it seems to me, why couldn't it be done this afternoon?

Mr. Renfrew: Well, I don't wish to argue the case, your Honor, in view of all the testimony not being in.

The Court: Well, but what remains to be put in would be only a small part of it and, if you argue the testimony that is in, then of course the Court wouldn't need the argument on the depositions.

Mr. Renfrew: Well, then let's recess, your Honor. If we are going to argue this afternoon, what is the use of going on now. I mean, I would like to get out of here for a few minutes. I haven't had breakfast yet. It is after twelve o'clock and, if we are going to keep the Court here this afternoon, why it will be five o'clock before we get out of here if we don't start until two.

The Court: Well, is there any objection to arguing the case this afternoon?

Mr. Boochever: I have no objection.

Mr. Renfrew: I have objection seriously. I don't [332] wish to argue the case this afternoon. I am only consenting to it because I understand that the Court wants to leave here, and I have a lot of other things, your Honor, that I had planned to do. As you well know, this is about the only time that an attorney in Anchorage can get anything done in his office, is on Saturday afternoon, particularly when he is in court all week, such as I have been. But I realize that your Honor is trying to get out of here, and I certainly don't want to hold you up, and that is why I am willing to stay, but I don't feel that we should stay here now and run straight through until four or five o'clock.

The Court: Well, the Court didn't have that in mind, but—

Mr. Renfrew: If Mr. Boochever thinks that he can conclude his rebuttal testimony, as he told me, in ten or fifteen minutes, why I am willing to stay for that and then go prepare for the argument, and I will be glad to do that because that will give us a little time after all the testimony is in to prepare for the argument; but this is an important case, your Honor; a considerable amount of money is involved here; and even though I yield to the Court's desire to get home, and I want to assist in every way I can, but at the same time I feel obligated to my clients to give them the benefit of everything that they have coming to them. Now, I am willing to proceed. [333]

The Court: Well, the Court wouldn't even sug-

gest going on this afternoon were it not for the fact that the whole party had planned on leaving, first on Saturday, and then, when we couldn't get through with this case, we made it Sunday, and I think that, balancing relative conveniences and inconveniences, there wouldn't be any difficulty in deciding in favor of leaving Sunday morning, so I think that we should go on with the argument this afternoon.

Mr. Boochever: Your Honor, I certainly don't want to inconvenience counsel or the Court, but I am perfectly satisfied, if the Court feels that it would be just as advantageous, to submit arguments in writing after all the testimony is in.

The Court: Would you prefer that?

Mr. Boochever: I have no definite interest to it being one way or the other.

Mr. Renfrew: I would if I am not limited too strongly as to time, your Honor. The Court is familiar with the calendar here from now on, and I have got to have some time. I will yield to that.

The Court: Well, won't you have plenty of time pending the taking and receipt of the depositions?

Mr. Renfrew: Well, I will have some time; yes, your Honor, but I say I would like to have—I wouldn't like to be limited too strictly on the time because, even though [334] I will have some time between the taking of the depositions and the arguments, your Honor knows about the court schedule here, and I am trying to tell you that I am in court almost every day for the next three or four weeks,

and I start Tuesday morning with criminal cases here in this court and, for some unknown reason, it seems that I have a number of them set in a row. Now, that is the only thing that I want to call the Court's attention to. I am not trying to stall, your Honor, and even if I could come to Juneau to argue this matter to convenience you and Mr. Boochever, but I wouldn't like to be limited too strictly as to the time for the argument.

The Court: Well, since the Court can't decide the case until after the receipt of the depositions, I don't see how you could possibly be limited on time.

Mr. Renfrew: Well, your Honor, I don't wish to argue with the Court but, if I am given ten days to get these depositions in and a further ten days to get my argument in, I can't do it. That is the point that I am making to your Honor. I will not have time within twenty days to get those depositions out, get the returns back here, and in ten days thereafter submit my argument in writing.

The Court: Well, am I to understand then that you would prefer to make an oral argument this afternoon?

Mr. Renfrew: I wouldn't prefer it, your Honor, but I would rather make it in writing to the Court, but I will [335] have to have additional time, but I will stay here and argue it this afternoon if the Court would rather have it done that way.

The Court: Well, from what you say, it is obvious that you would want about, what, thirty days?

Mr. Renfrew: I would like to have at least

thirty days, your Honor, to submit my argument in.

The Court: Is there any objection to that?

Mr. Boochever: No, I have none because I don't think we can get our depositions all answered and everything else in much less than thirty days, and that is satisfactory with me to submit the argument within thirty days of the termination of the case.

Mr. Renfrew: No. Within thirty days from the date we have the depositions.

Mr. Boochever: With one exception on that, if we will make a further agreement that the depositions be submitted between ourselves within ten days after the completion of the case, so we can start the thing in operation and so there is no undue delay. It is possible that one of the depositions may not be forthcoming or something like that. I don't want to be stalled on this thing indefinitely.

Mr. Renfrew: You haven't been stalled——

Mr. Boochever: I know that.

Mr. Renfrew: Any agreement that Mr. Manders cares [336] to make with me on the time of those depositions will be satisfactory. I assume that he will prepare the depositions here because I will be here.

Mr. Boochever: We haven't decided that yet. I don't know.

Mr. Renfrew: I mean, I will agree with Mr. Manders that the depositions will be gotten out just as quickly as he and I agree on it if he is going to do the work. Probably ten days would be satisfactory with me.



The Court: Well, now, of course since the plaintiff has the opening and closing argument, it seems to me that the time you mention, thirty days, would practically elapse before you would be in receipt of plaintiffs' argument and brief, but the difficulty is that you want at least thirty days after the depositions are on file.

Mr. Renfrew: Counsel has agreed to that provided that we have the depositions out within the ten-day period; that is, we prepare them within the ten-day period.

The Court: Well, if there is no objection, why we can dispose of it in that manner then.

Mr. Boochever: I am sorry, your Honor—what is the manner now?

The Court: Well, you just heard him say that you have no objection to him having thirty days after the depositions are issued provided it is within ten days. [337]

Mr. Renfrew: Provided that the depositions are prepared and on their way within ten days.

Mr. Boochever: That is satisfactory.

Mr. Renfrew: When I say "prepared," I mean that we send them out.

Mr. Boochever: That is right. That is fine.

The Court: Well, do you want to submit, for instance, the written argument independently of each others' briefs, or do you want to have it understood now that you are bound to follow the rule or the procedure that would prevail of course if the matter were disposed of here this afternoon; the plaintiff makes his opening argument and then the

defendant and then the plaintiff his closing argument?

Mr. Renfrew: That would be my understanding, your Honor, and I feel that I will even go so far as to say that, if I have thirty days from the time of service of his argument upon me, if service is this afternoon, I will get it out.

The Court: Well, very well then. That will be the order of the Court.

Mr. Boochever: Do you wish us to proceed now with the rebuttal testimony?

The Court: If it won't take too long beyond noon.

Mr. Boochever: Well, beyond one, you mean?

The Court: No. Beyond noon. If you think it is going to take any considerable time beyond twelve, why—— [338]

Mr. Boochever: Well, it is after twelve now, your Honor.

The Court: Well, that time is a little fast.

Mr. Boochever: Well, I anticipate that my questions will take a very brief time, and I think it will probably take five minutes with Mr. Blanchard and maybe five or ten at the most with Mr. Owens.

Mr. Renfrew: Let's try it, your Honor, and see.

Mr. Boochever: We can cut it off any time, your Honor.

The Court: Very well.

Plaintiffs' Rebuttal

MEL BLANCHARD,

called as a witness on behalf of the plaintiffs, having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Boochever:

Q. Mr. Blanchard, you testified before about your being present and supervising the repairs of this vessel; is that right?      A. Yes.

Q. Now, where was the vessel when you first came down there?

A. At the Stikine Fish Company Dock.

Q. And approximately how long was it there, do you know?

A. In the vicinity of one month. [339]

Q. Now, where was it after that, Mr. Blanchard? Where did you take it after that?

A. To the Ballard Shipyard.

Q. And how was it taken to the Ballard Shipyard?      A. It was taken under tow.

Q. And did you strike anything—were you on the vessel when it was taken under tow?

A. Yes.

Q. Did it strike anything or hit anything in that trip?      A. No.

Mr. Renfrew: Your Honor, I think this is improper rebuttal. What is the nature of this testimony now? Whether it struck anything going across there? This should have been put on in his case in chief. Your Honor, what is he rebutting?

(Testimony of Mel Blanchard.)

Mr. Boochever: What I am rebutting is they have tried to imply that this extensive damage to the bow of the vessel didn't occur when they had it. I assume that is what they have been attempting to do by inference at least, and I am trying to show that that was when it hit the rock and when the damage was done and that was the only time it could have been done; rebuttal to their testimony.

Mr. Renfrew: I don't remember any such inference. Maybe there was.

The Court: Well, I thought there was nothing in the evidence to indicate the possibility of any further [340] damage after the——

Mr. Boochever: I just wanted to obviate any possibility.

The Court: I don't think it is necessary to exclude every possibility.

Mr. Boochever: That was the only purpose of that question, your Honor.

Q. Now, Mr. Blanchard, have you had a previous experience with Diesel engines?

A. Yes. Not that size, but I have had previous experience; yes.

Mr. Renfrew: We object to this, your Honor, as improper rebuttal. The man was asked on direct examination and on cross-examination about his experience and then on redirect again and on recross.

The Court: Well, then you mean it is repetitious?

Mr. Renfrew: Certainly. It is improper rebuttal.

The Court: Well, it would be repetitious but, unless it is preliminary and it would seem to be pre-

(Testimony of Mel Blanchard.)

liminary, however, it is unnecessary since his qualifications already appear.

Mr. Boochever: Your Honor, my recollection is that I admitted asking him that, that counsel asked him about his experience with boats but he did not cover his experience with Diesel engines. That is what I had in mind. [341]

The Court: Very well. Objection overruled.

Q. How long did you work on Diesel engines approximately?

A. I would say approximately four or five years; not all the time, you understand, just off and on.

Mr. Boochever: That is all.

Mr. Renfrew: No questions. Wait just a minute.

### Cross-Examination

By Mr. Renfrew:

Q. When you say that the vessel was tied up to the Stikine Fish Company Dock for approximately one month before it was taken over to the shipyard, you are just guessing, aren't you?

A. That is right.

Q. And you don't know the date it was taken over or the date it was brought back, do you?

A. No, I don't.

Mr. Renfrew: That is all.

Mr. Boochever: That is all.

## ALMON E. OWENS

called as a witness on behalf of the plaintiffs, having previously been duly sworn, testified as follows:

## Direct Examination

By Mr. Boochever:

Q. Mr. Owens, did you hear the testimony yesterday of Mr. Oaksmith in regard to a conversation with you approximately [342] at the P. A. A. office in Seattle?      A. I did.

Q. Do you recall now whether or not you had a conversation with Mr. Oaksmith at that place?

A. I believe so.

Q. Did you remember that prior to Mr. Oaksmith's testimony?      A. I did not.

Q. Now, do you recall whether Mr. Oaksmith said anything to you, independent of his testimony, about the crankshaft of the vessel?

A. I don't recall the conversation.

Q. Do you remember a man named Dawe who was supposedly with Mr. Oaksmith?

A. I don't remember him at all.

Q. And you have no recollection of a man by that name—Dawe?      A. No, I don't.

Q. Does that mean you did not see him?

A. I wouldn't say I didn't see him. I don't remember.

Q. Now, when was the first time that you saw the logbook of the vessel?

A. I don't remember the date. Sometime when I was down there during the summer Mr. Blanchard brought it to my attention.

(Testimony of Almon E. Owens.)

Q. You did not discover that yourself?

A. No, sir.

Q. He showed it to you? [343]

A. That is right.

Q. Now, when you were—going back—when you were having your conversations with Mr. Anderson, you heard Mr. Saindon testify that he overheard a portion of that conversation while you were in the engine room. Do you recall Mr. Saindon being there?

A. I don't recall his being there at all.

Q. Could he have been there?

A. That is possible.

Q. Now, Mr. Anderson stated that you agreed to take the vessel as is where is. Was that ever said to you?

A. No, sir.

Q. Any such agreement reached?

A. No, sir.

Q. What was the agreement, as you recall it, from what was said between you and Mr. Anderson, Junior and Senior, in regard to the purchase price and how it was to be paid?

Mr. Renfrew: I object to this as repetition. He has stated it at least two or three times previously.

The Court: I think that it is repetitious.

Mr. Boochever: All right. That is all.

### Cross-Examination

By Mr. Renfrew:

Q. Now, Mr. Owens, did I understand you to

(Testimony of Almon E. Owens.)

just state that [344] Mr. Blanchard showed you the logbook?      A. That is right.

Q. And then you didn't find it hidden in a locker down underneath the vessel?

A. I never said that.

Q. You don't recall testifying that you found it not where it should have been with the maps but down underneath in a locker below?

A. I didn't say I found it.

Q. And Mr. Blanchard showed it to you in the normal course of events?      A. That is correct.

Q. And you say that you now recall your conversation with Mr. Oaksmith in Seattle at the time that he told you the crankshaft was flat?

A. I remember meeting him, but I don't remember the conversation.

Q. Well, you just recall now that you did see him there, but you have no knowledge as to what the conversation was about at all?

A. That is right.

Q. You don't have any recollection of he and Mr. Dawe trying to interest you in some other tug-boat?      A. I don't remember that.

Q. And you have no recollection of getting a room at the New [345] Washington Hotel for Mr. Dawe and discussing with him the purchase of a boat?      A. I do not.

Q. Well, now that you remember that conversation, do you remember the further conversation with Mr. Oaksmith, in accordance with his testimony, which took place out at the Fish Company Dock where you had the vessel tied up?



(Testimony of Almon E. Owens.)

A. I do not.

Q. You don't recall any conversation there with him in which he asked you why you purchased the boat knowing the crankshaft was probably flat after he had told you so and which he stated to you and you replied, "I purchased it because I could get those terms and I couldn't afford to buy other places because I didn't have the cash?"

A. That is not correct.

Q. And would you say it is correct—

A. I never made any such statement.

Q. And you don't remember any such conversation? A. I never made any such statement.

Q. And you don't remember any such conversation—

Mr. Boochever: I object to that. He has answered that question. He stated he never made any such statement.

Q. Do you remember any such conversation with Mr. Oaksmith at all?

Mr. Boochever: Well, I would like a ruling on that. [346] Definitely, your Honor, I think it has been answered.

The Court: Well, in view of his answers, the objection is overruled.

Q. You may answer.

A. Will you repeat the question?

Q. Do you remember any such conversation?

A. I wouldn't remember it; no, sir.

The Court: Well, what is it that enables you to recall now that you saw Oaksmith there?

(Testimony of Almon E. Owens.)

A. I remember meeting him up in front of the Pan America Office because his brother took me up to him and introduced me to him. What the conversation was that took place there, I do not remember at this time.

The Court: Well, the only reason you remember the incident is because his brother took you out of the office to the sidewalk there?

A. After he gave his testimony yesterday, that brought it to my attention.

The Court: That is all.

Q. Now, you remember his brother taking you out of the office?

A. I don't remember why I was up there. I was up there——

Q. No; no. I didn't ask you that, sir. That is not in response to my question. I asked you, now do you remember Mr. Oaksmith's brother taking you out of the Pan American Office and introduced you to Mr. Oaksmith? [347]

A. I believe that is right; yes, sir.

Q. And then do you recall getting in the car with Mr. Oaksmith and another gentleman and going up to the New Washington Hotel?

A. That is possible; yes, sir.

Q. And do you recall having any conversation with them in the presence of Mr. Oaksmith?

A. We doubtless did have, but I don't remember what.

Q. And do you recall going up to the New Washington Hotel with them?

(Testimony of Almon E. Owens.)

A. I was staying at the New Washington Hotel.

Q. I believe I knew that you were, but do you recall going up there with Mr. Dawe in the car and Mr. Oaksmith?

A. I don't remember that.

Q. You don't recall that?

A. No, sir; I don't remember it.

Mr. Renfrew: That is all.

### Redirect Examination

By Mr. Boochever:

Q. Did you know Mr. Oaksmith's brother before?      A. I met him in Ketchikan; yes, sir.

Mr. Boochever: That is all.

Mr. Renfrew: That is all.

Mr. Boochever: We rest, your Honor, except for the [348] depositions.

Mr. Renfrew: So we will have a clear understanding, your Honor, there has been some discussion concerning depositions here; and I think that you wish to take the deposition of Mr. Mills?

Mr. Boochever: And Mr. Dent.

Mr. Renfrew: Both Mr. Mills and Mr. Dent?

Mr. Boochever: That is right.

Mr. Renfrew: And I wish to take the deposition, your Honor, of Mr. Dawe, of Mr. Oaksmith, and also of someone in the shipyards there with regard to the estimate of the repair of this engine. Your Honor will recall yesterday you stopped me asking direct questions on that when counsel objected to it as hearsay, and I said it was all right, I wouldn't

(Testimony of Almon E. Owens.)

proceed further, with the understanding that I could take the deposition. So, there will be three depositions at least, your Honor, that I will have.

Mr. Boochever: I don't recall anything about the one of Mr. Oaksmith, Mr. Renfrew. Was that brought up before, or is this the first time you are mentioning it now?

Mr. Renfrew: I believe that I stated that I wished to take the deposition of the men that were present in the car when the conversation of Mr. Oaksmith, who testified here, testified to with regard to advising Mr. Owens of the flat crankshaft, and that it was Mr. Dawe and Mr. Oaksmith. [349]

Mr. Boochever: I have no objection. I didn't recall it before.

The Court: Well, since you are going to take some depositions, or even one, there would be no particular objection to taking more, so that it may be understood then that the understanding is then that the plaintiff takes two more depositions and the defendant three.

Mr. Boochever: Your Honor, I would like to add one more, too; the Fairbanks-Morse repairman in Seattle.

The Court: Very well.

Mr. Renfrew: I have no objection. In fact, if I have any more, I will let counsel know.

The Court: Well, the only reason for agreeing on the number now, which of course wouldn't necessarily be binding, is so that you both would be apprised of the fact that all the evidence is in when

that number of depositions are presented.

Mr. Renfrew: Before you adjourn, you Honor; I may want a transcript of this testimony, and I would like to inquire of the reporter if it is possible, if I should decide to order a transcript of the evidence, if she would have time to get it out by the end of the month.

Court Reporter: I am afraid it would take longer than that where we have a term of court, and I have some other orders. I would do [350] my best.

Mr. Renfrew: That might be important, your Honor, in my argument.

The Court: Yes, I can see where it would be important. But we start in Juneau on the trial of cases on the 15th and there is a term of court set at Ketchikan for the 26th.

Mr. Renfrew: I realize the handicap we are all working under, your Honor, but, since this matter has been in litigation for a considerable period of time, I would ask counsel to stipulate with me that, if within a few days, within three or four days, if I decide that I need a transcript of this testimony, that it be stipulated that I have until the reporter can get the transcript out before I have to make my reply to your argument and that I will by the same token split the cost of the transcript with you if you desire a copy.

Mr. Boochever: That is satisfactory.

The Court: Very well. Then everything is harmonious, at least for the moment.

(End of Record.) [351]

United States of America

Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz. No. A-5226 of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 351, both inclusive, contain a full, true and correct transcript of all the testimony and proceedings at the trial of the above-entitled cause, with the exceptions of the depositions submitted and which are of record in the official file of the above-entitled cause.

Witness my signature this 13th day of August, 1951.

/s/ MILDRED K. MAYNARD,  
Official Court Reporter.

[Endorsed: Filed August 16, 1951.]

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[Title of District Court and Cause.]

DEPOSITION OF ORVILLE H. MILLS, A  
WITNESS CALLED ON BEHALF OF THE  
PLAINTIFFS.

Pursuant to stipulation for taking depositions, hereto annexed, on this 12th day of April, 1951, at the hour of 11:00 o'clock a.m., the deposition

of Orville H. Mills, a witness called on behalf of the Plaintiffs in the above-entitled and numbered cause, was taken at 656 Central Building, Seattle, Washington, before E. E. Lescher, a Notary Public in and for the State of Washington, residing at Seattle.

Appearances:

The Plaintiffs appearing by

ROBERT L. FLETCHER, of

CHADWICK, CHADWICK & MILLS,

Appearing as attorney and counsel for  
the Plaintiffs.

The Defendants appearing by

WALLACE AIKEN, of

EMORY & HOWE,

Attorney and Counsel for the  
Defendants.

(Thereupon the following proceedings were had and testimony given, to wit):

Mr. Fletcher: Let the record show that this is the deposition of Orville H. Mills, taken as a witness on behalf of Plaintiffs, pursuant to stipulation, and that all objections are reserved until the time of trial except as to the form of the question and the responsiveness of the answer. Is that agreeable, Mr. Aiken?

Mr. Aiken: Yes.

Mr. Fletcher: And that the signature of the witness to his deposition is waived?

Mr. Aiken: Yes.

## ORVILLE H. MILLS

called as a witness on behalf of the Plaintiffs, being first duly sworn by the Notary Public, was examined and testified as follows:

## Direct Examination

By Mr. Fletcher:

Q. Will you please state your name?

A. Orville H. Mills.

Q. And your age, Mr. Mills? A. 43.

Q. And your address?

A. 656 Central Building, Seattle, Washington.

Q. What is your profession?

A. Attorney at law with the firm of Chadwick, Chadwick & Mills.

Q. How long have you been engaged in that profession? A. 22 years.

Q. Are you acquainted with A. E. Owens and his brother, R. F. Owens? A. Yes, sir.

Q. How long have you known them?

A. About 15 years.

Q. And under what circumstances?

A. We have represented them in the office on various matters over the period of fifteen or sixteen years.

Q. Are you acquainted with Jack C. Anderson, Sr., and Jack C. Anderson, Jr.?

A. Yes, I am.

Q. What is the extent of your acquaintance with them?

A. I met Jack C. Anderson, Sr., on April 1, 1947.



(Deposition of Orville H. Mills.)

and I met his son, I believe it was, the following day. I met one or the other of them on several occasions between that period and about May 21, 1947.

Q. Were these meetings all in your office?

A. All of the meetings were in the office here.

Q. Will you state the circumstances of your first meeting with Jack C. Anderson, Sr.?

A. Mr. A. E. Owens brought Mr. Jack Anderson, Sr., into my office on April 1, 1947, and introduced him upon that occasion, which was the first occasion of my meeting with him.

Q. And would you state the substance of what took place at that meeting?

A. Mr. Owens, after introducing Mr. Anderson, outlined that Mr. Anderson had an Army Tug passenger ship for sale; that Mr. Anderson had shown the vessel to Mr. Owens; that Mr. Owens was in the market looking for a tug in connection with his logging operations out at Ketchikan, Alaska, for particular duty in connection with towing rafts of logs from his logging operations in the waters of Alaska to mills, I believe, around Juneau, and that in that connection he had looked at Mr. Anderson's vessel.

Q. Did Mr. Owens state the purchase price of the vessel?

A. He stated that the vessel was for sale at the price of \$25,000, five thousand dollars down, two thousand dollars a month with 8 per cent interest on deferred balances.

(Deposition of Orville H. Mills.)

Q. And in what connection had Mr. Owens come to see you about the vessel?

A. There were some questions as to the condition of title and as to prior encumbrances upon the vessel, and he had stated that he had come for the purpose of advice in connection with consideration of a preliminary agreement covering the purchase. And——

Q. (Interposing): And did you make—well, go ahead.

A. I inquired of Mr. Jack Anderson, Sr., and through him was advised that he and his son, Jack Anderson, Jr., operated the Anderson & Son Transportation Company in Alaska; that they had purchased an Army tug, I think it was TP-100, from War Surplus; that they had used it for but a short time; had brought it down from Alaska, and that they had it for sale.

He stated that they had not as yet received the bill of sale covering the vessel, and had some concern as to being able to secure the bill of sale; that the vessel was not documented; he had some question as to the documentation of the vessel; that the vessel was covered by a mortgage to the First National Bank of Anchorage—I believe it was a thirty thousand dollar mortgage covering this vessel, and other property and that there would be a problem on the sale of this vessel and securing the release of this vessel from under that mortgage.

He had had some preliminary correspondence with the bank and, as I recall, had a telegram from

(Deposition of Orville H. Mills.)

the bank in which they authorized him to sell at the price indicated and to, upon selling, assigning the down payment and the note and mortgage for the purchase price to the bank, and the bank would then release the prior mortgage that covered this vessel and other property.

Both Mr. Anderson and Mr. Owens posed the question as to how a present agreement could be drafted in that connection, and Mr. Anderson then expressed his desire that some present agreement be drafted as against the necessity of awaiting the procuring of a bill of sale, documentation and release of the prior mortgage, and then entering into an agreement.

Q. Why was he anxious to do that presently?

A. He expressed the statement that he had a sale of the vessel being negotiated to an individual or a group of individuals in Vancouver, B. C.; that they had thoroughly examined and inspected the vessel, and were prepared to go ahead at that price, and that he was awaiting word from them upon a sale of the vessel; and while he was in the office that day, he received a telephone call which was taken within the office here, and on turning away from the 'phone, he informed Mr. Owens that that was a call in connection with the sale of the vessel to the individual or the group in Vancouver, and that they were anxious to complete it, and if Mr. Owens wanted to take the vessel, that they would have to go ahead and get a firm commitment on it at that time.

(Deposition of Orville H. Mills.)

Q. Did Mr. Owens state whether he was willing to proceed on the basis that was outlined then?

A. Mr. Owens indicated that he was ready to proceed to purchase the vessel if the vessel was as indicated and represented by Mr. Anderson.

I inquired of Mr. Owens whether he had fully inspected the vessel, or had had any competent marine engineers inspect it. He informed me that he had not, and he engaged in some side conversation with Mr. Anderson with reference to the vessel, the only portion of which I noted being an assurance by Mr. Anderson that the vessel was as represented, and that they could proceed to close the transaction at that time.

Q. Did Mr. Anderson make any reference to any inspections that might have been made previously?

A. Yes. He had in the course of that conversation referred to the fact that the group in Canada, or the individual in Canada had made a full inspection of the vessel, and that it was as Mr. Anderson had represented it to Mr. Owens.

Q. And in view of that, what did you proceed to do?

A. They were desirous of getting some preliminary agreement drafted that would bind the parties. I dictated an agreement while Mr. Anderson and Mr. Owens were present. In the course of that, a problem was suggested in that Mr. Anderson was going back to Alaska, and Mr. Owens, to make some repairs on the scored crankpin, as I understand it, was to take possession as of the time of

(Deposition of Orville H. Mills.)

the preliminary agreement, and there was some discussion as to a clause which would make the purchaser responsible for the vessel at the place where it was then located—at Olson & Winge's—in view of the fact that he was going to move it to the Stikine Fish Company's dock for the purpose of making a repair on the scored crankpin. And we inserted a clause in the contract to assume responsibility for the vessel as of the date that the preliminary agreement was executed, at the Olson & Winge dock.

I think that there was also some discussion as to full insurance coverage on the vessel.

Q. Was the agreement drawn up in their presence on that day?

A. The agreement was dictated in their presence, and was prepared later.

Q. Did anything further take place at that meeting on that day?

A. I think that was the substance of the meeting on that day.

Q. Did you have any subsequent meeting then with these two people?

A. The following day, on April 2nd, Mr. Jack Anderson, Sr., and Mr. Jack Anderson, Jr., and Mr. Owens came in and went over the agreement which I had prepared, and the agreement was executed by them on that date, and provision had been made for acceptance of the agreement by the First National Bank of Anchorage of their mortgage and the requirement that upon the closing

(Deposition of Orville H. Mills.)

of the transaction that mortgage be released. And at their request, I forwarded the agreement on up to the First National Bank of Anchorage for the execution of it and consent by them, and I think that I also addressed some correspondence to the original builder of the vessel in connection with procuring the carpenter certificate for documentation, and made some inquiries from Mr. Landweer in connection with documentation.

Q. When you spoke of forwarding this to the bank at Anchorage, you said that it was at their request. You mean at the request of Mr. Anderson and Mr. Owens?

A. It was at their mutual request, yes.

Q. Did anything else take place at that meeting of April 2nd?

A. That is the substance of the meeting, according to my present recollection.

Q. Did you have any subsequent meeting with Mr. Anderson or Mr. Owens?

A. I think that Mr. Owens went back to Alaska about that time. Mr. Anderson was in the office on April 4th; April 7th, and possibly some other dates along that time, in connection with the advice that he had procured the bill of sale, and in connection with matters pertaining to documentation, and then they were all here as of April 22, and I mean, by "all," Mr. Anderson, Sr., Mr. Anderson, Jr., and Mr. A. E. Owens, on April 22nd, when the payment of five thousand dollars was made, the note and mortgage executed, and assignment of the note

(Deposition of Orville H. Mills.)

and mortgage and endorsement of the check to the First National Bank of Anchorage executed, and the bill of sale delivered and the documents forwarded.

Q. And you say that was on April 22nd that that took place?

A. April 22nd, I believe.

Q. Did you have any subsequent transactions with either of the two Mr. Andersons?

A. Yes.

Q. What was the nature of those transactions?

A. Well, Mr. Anderson, Jr., and Mr. Anderson, Sr., came into my office on May 21, 1947, in response to a letter which I had addressed to them on behalf of Mr. Owens, in connection with a claim for misrepresentations made in connection with the sale of the vessel. The letter had been addressed to Mr. Anderson, Jr., in Seattle, and Mr. Anderson, Sr., in care of the Bank at Anchorage, but apparently he had been in Seattle, as they both came into my office within four days after the letter was mailed.

Q. You mean that it was a duplicate letter?

A. Yes.

Q. And one went to each of the two men?

A. Yes.

Q. Do you recall the date on which you sent the letter?

A. The letter was a letter of March 17, 1947.

Q. Are you sure that it was March?

A. May 17, 1947.

(Deposition of Orville H. Mills.)

Q. When they then came into your office on May 21, what occurred then?

A. They came in response to a letter which I had written on behalf of Mr. Owens. We discussed the matter of what representation had been made. Mr. Anderson, Sr., admitted having represented that one crankpin had been scored on the vessel; that there had been some damage to the forefoot of the vessel, and that the vessel was not leaking. And he took the position, as I recall—

Mr. Aiken (Interposing): I object now as to what position he took.

Q. (By Mr. Fletcher): Were these statements made by Mr. Anderson at the time of that meeting in your office?

A. Yes. This was all a matter of discussion between Mr. Anderson, Sr., largely speaking for the parties who came in, and myself.

Q. He made these statements then to you, and in your presence?      A. That is correct.

Q. And would you state what he said to you about that?

A. He stated that on bringing the TP-100 down from Alaska, they had struck a log on the way down, and that the forefoot of the vessel had been bruised as the result of striking that log.

Q. Did he say anything with reference to the weather conditions at the time they struck the log?

A. He said that the weather had been foul



(Deposition of Orville H. Mills.)

and the water rough, and they had struck the log in the course of that trip.

Q. Was there any statement made of the possibility of what they struck having been anything else?

A. I confronted him with what at that time we had evidence of, and that was the fact that the vessel had grounded upon a rock and struck a rock in the channel on the way down. He emphatically denied that they had struck a rock, or any object which could occasion extensive damage to the forefoot or to the keel of the vessel.

Q. Did either of them state what they had told Mr. Owens as to the amount necessary to repair the vessel?

A. At that time, they stated that they had told him that there was——

Mr. Aiken (Interposing): I will object to "they." He should state which individual said what.

The Witness: My best recollection is that Mr. Anderson, Sr., was the one who was making the statements; that Mr. Anderson, Sr., stated that he had told Mr. Owens that there was a scored crankshaft, that the forefoot had been bruised, and that it would take five thousand dollars for the purpose of making repairs to the vessel.

Q. In connection with the bruised forefoot, did he state what the nature of the repair would be?

A. No, he did not go into the extent of the nature of the repair.

(Deposition of Orville H. Mills.)

Q. Did they make any statements concerning the previous use of the vessel during the time that they had owned it?

A. In connection with the claim made by Mr. Owens that the keel had been damaged, Mr. Anderson, Sr., did state that the TP-100 had been used by them for some transportation in Alaska, which involved some river transportation, and that it had too deep a draft for the shallow river bars, and that it had been scraped or dragged at times on river bars, giving that as an explanation of possible damage to the keel.

He referred to it lightly, merely as the normal and usual scraping of a vessel on a river bar.

Q. In connection with the use of the vessel on the rivers in Alaska, did they mention whether such use might have occasioned damage to the fore-foot?

A. There was no indication that there had ever been any collision of any kind; it was just the incidental scraping on the bars.

Q. When you stated that Mr. Anderson, Sr., had stated to you that the vessel had run into a log on the way down, did he make any reference as to the effect of that collision with the log on the boat at the time, as to whether they had noticed that they had struck a log?

A. Why, yes. He indicated that they had known that they had struck a log. I think that he put it

(Deposition of Orville H. Mills.)

as having struck the log in rather rough weather on the way down.

Q. Did he mention that the shock was noticeable in the boat?

A. I do not think that that was specifically stated.

Q. At the time of that meeting in your office, was any statement made concerning what their intentions were in the next few days, as to whether they were going to further contact Mr. Owens concerning this matter?      A. Yes.

Q. What was that?

A. Mr. Anderson, Sr., stated that he was leaving within the next few days for Alaska with the other vessel that he owned, and that he expected to be up in Alaska and would drop by and would see Mr. Owens on the way up to Alaska for the purpose of discussing this matter, and also for the purpose of returning a lifeboat which he had borrowed from Mr. Owens, according to him, and which he was using for the purpose of this particular trip, I thought, and that the matter of the claim would be considered and discussed with Mr. Owens.

Mr. Aiken: I ask that that be stricken if it is offered for the purpose of showing any efforts at a compromise of the claim.

Q. (By Mr. Fletcher): In connection with the lifeboat, was this a boat which the Andersons had borrowed? Did I understand you correctly on that?

A. All I know as of that time was what Mr. Anderson stated, and that was that he had a life-

(Deposition of Orville H. Mills.)

boat which belonged to Mr. Owens which he was going to return on the occasion of calling on Mr. Owens at that time.

Q. Did you have any subsequent dealings with either Mr. Anderson, Sr., or Mr. Anderson, Jr.?

A. The extent of any subsequent dealings was the sending to them of the demand of July 24, 1947, which I believe is in evidence, which was the detailed statement of the claim of Mr. Owens, and also the demand for the return of the lifeboat, which had not been returned.

Q. Did you have any response to that demand of July 24th?

A. I received no response to that demand.

Q. Have you had any subsequent contact with either of the two Andersons between then and now?

A. I have not seen Mr. Anderson until today.

Mr. Fletcher: You may inquire.

### Cross-Examination

By Mr. Aiken:

Q. In your recollection of these events of four years ago, do you have notes from which you have refreshed your recollection?

A. I have a very extensive file here which covers the entire transaction—yes—and I also reviewed my day book in connection with it.

Q. You have answered these questions from a typewritten list here or series of sheets of at least seven or eight sheets, have you not?

(Deposition of Orville H. Mills.)

A. I have not. I have no record or document before me at all.

Q. I mean, the questions have been asked by Mr. Fletcher by reading from seven or eight legal length double spaced typewritten sheets, is that correct? A. That is correct, yes.

Q. And who prepared this list of seven or eight sheets?

A. I prepared that for Mr. Fletcher, who has no knowledge of this matter, and I asked him to come in today for the purpose of conducting this examination.

Q. And the sheets were prepared for the purpose of this hearing?

A. For the purpose of his examination of the witness—yes.

Q. And the information therein contained was from the file which you kept during the course of these negotiations? A. That is correct.

Q. Now, when they first came in, what do your notes indicate with respect to the representations that Mr. Anderson is alleged to have made?

A. I have no notes as to any representations which Mr. Anderson is claimed to have made.

Q. So you do not know what representations he made to Mr. Owens, and at that time, you didn't know of any representations?

A. Perhaps I am confused. You say, when they first came in. You mean April 1, 1947?

Q. Yes.

(Deposition of Orville H. Mills.)

A. No, I do not, as of that date, have any knowledge of the representations.

Q. And that was the date that the agreement was drawn up?

A. That was the date that the agreement was drawn up, yes, sir.

Q. And you were retained by Mr. Owens to draw it?      A. That is correct.

Q. And presumably you were paid by Mr. Owens for this service?      A. That is correct.

Q. And do you still represent him in various legal matters?      A. Yes.

Q. And with reference to that agreement, you say that it was dictated in their presence?

A. That is correct.

Q. Did you use terms in that agreement of warranty as to the condition of the vessel?

A. My recollection is that there was no express term within the agreement.

The agreement I think would speak for itself.

Q. Mr. Anderson in your presence, or at least your notes do not indicate that he made any representations as to the condition of the vessel in your presence on April 1?

A. My notes do not indicate that he made any representations, and the only indication that I have is the matter of the statement, as I have testified, that the vessel was as represented, and he had some side conversation with Mr. Anderson, concerning which——

(Deposition of Orville H. Mills.)

Q. (Interposing): But you do not know what he represented—on April 1, 1947, when you drew the agreement, and prior to the drafting of it you didn't know of your own knowledge what the terms were which consisted of the as represented term which you have used?      A. That is correct.

Q. And did Mr. Owens mention to you anything about "as is and where is basis of sale"?

A. The only thing mentioned that in anywise would be comparable to what you have referred to—

Q. (Interposing): I would just like to have you answer that, if you can.

A. No. There was nothing said as to where is, or as is, by either Mr. Owens or Mr. Anderson in connection with drafting the agreement.

Q. What was said when they first came in on April 1st and Mr. Owens introduced Mr. Anderson—I wonder if you could go over that again, just what was said—strictly with respect to the—well, I will strike that last question. Well, with respect to the representations, there were no representations made by Mr. Anderson to Mr. Owens in your presence, is that correct?

A. Yes, there were.

Q. What were the representations?

A. He represented, first, that he had a boat—I mean, if you want me to go into that—

Q. (Interposing): I mean with respect to the condition of the vessel.

(Deposition of Orville H. Mills.)

A. With respect to the condition of the vessel?

Q. Yes.

A. Nothing, except his statement—when I inquired of Mr. Owens as to whether he had had full inspection, and Mr. Anderson was asking him to presently close the deal, what Mr. Anderson stated was that the vessel was as represented. Now, what the representation was, that was the subject of separate conversations between them.

Q. Do you have the notes here of April, 1947?

A. Yes, I have.

Mr. Aiken: I wonder if we could have them marked and identified?

Mr. Fletcher: I would object to introducing the notes themselves. He merely used those to refresh his recollection.

Mr. Aiken: He said that he didn't have any independent recollection.

Mr. Fletcher: No, he didn't say that. He said that he referred to his notes to refresh his recollection, and he has done so. They are not part of the evidence.

The Witness: As a witness, and claiming the privilege of denying that, Counsel, I have never stated that I haven't any independent recollection. I have a very definite independent recollection of it, but, as you or anybody would do, I went back to review all my records in connection with the transaction.

Q. Your notes of April 1, 1947, then, to describe them, consist of a yellow sheet with pencil nota-



(Deposition of Orville H. Mills.)

tions on one side, and a half page of another sheet?

A. The notes as I presently have them with reference to that conference comprise one sheet pertaining to the terms and condition of the sale; one-half sheet pertaining to documentation of the vessel, and another half sheet pertaining to information as to the lack of registration and insurance, and notes as to copies of the various documents.

Q. That is, it contains the names of the parties, and a description of the vessel, and the terms of the sale, is that right?

A. I have no objection to your looking at them (handing notes to counsel).

Q. Do these bear the date of April 1, 1947?

A. They do not.

Q. There is nothing on these notes, is there, as to the use to which Mr. Owens said that he was going to put the tug?      A. There is not.

Q. Do you have your notes concerning the visits of April 2nd; April 4th; April 7th and April 22?

A. Those are taken—purely from my day book, of entry as of those times.

Q. And that shows, does it not, merely that Mr. Anderson at a certain time came into your office?

A. April 2nd shows Mr. Anderson and Mr. Owens signed contract; letter Bank, and ship builder.

Q. And those notes were made when?

A. As of that date.

(Deposition of Orville H. Mills.)

Q. You do not have any written notes then with respect to: (1) the use to which the tug was to be placed; (2) the use which the Andersons had made of it; (3) of the call allegedly from the Vancouver parties. That is your recollection as distinguished from your notes?

A. I have a written record of that—yes—but it was not made as of the day of the meeting. It was made as of the date when Mr. Owens made his demand on Mr. Anderson, which was May 17th or thereabouts. Actually, I think that it was a little later than that date—it was a month and a half or so after the conference.

Q. And you, as an attorney, are familiar with the fact that there would be implied warranties with the sale of a vessel as to its condition, are you not?

Mr. Fletcher: I object to that as calling for his conclusion.

A. As an attorney, I am aware of the fact that there are implied warranties in connection with the sale of the vessel.

Q. Did you advise Mr. Anderson that while there might not be terms of warranty in this instrument, nevertheless there were terms of warranty implied by law?

A. I was not advising Mr. Anderson in connection with the agreement. Mr. Anderson, as I understand it, was relying upon the First National Bank of Anchorage and its attorneys to protect him in the matter, and before the sale was consummated,

(Deposition of Orville H. Mills.)

their attorneys came down and went over the whole transaction—Mr. Arnell did.

Q. Mr. Arnell came here to your office?

A. That is correct.

Q. After the instrument of April 1, 1947 had been signed?

A. Yes, after it had been signed by Anderson, but my recollection is that before the transaction was closed with the delivery of the agreement as accepted by the bank, the execution of the agreement was subject to the acceptance of the transaction by the bank.

Q. Did Mr. Arnell state who sent him here?

A. Yes, that the bank sent him here.

Q. And then at the time that you drafted this, Mr. Anderson was not advised of the fact that the instrument as drawn contained implied warranties of the fitness of the vessel?

A. I don't know. He was not advised by me, no.

Q. You did not tell him?           A. No.

Q. What did Mr. Owens say about the use to which he intended to put the tug?

A. That he intended to put the tug to the use of towing rafts of logs from his logging operations, primarily in and around Ketchikan and in Alaskan waters, and other heavy towing.

Q. Did you ask Mr. Owens as to the use to which he intended to put the tug, or did he just volunteer that information?

A. That was his statement indicating why he was in the market, and why he was looking for a

(Deposition of Orville H. Mills.)

vessel. That was stated by him as he came in.

Q. You do not recall any statement by Mr. Owens that he was going to use the tug for any purpose of making a trip down South?

A. I believe that the first thing that he was going to do with it was to go down South and pick up a War Surplus barge that he had purchased down there.

Q. He made that statement here as to what he intended to do with respect to the use of it then?

A. My best recollection would be that his preliminary statement, as he introduced the subject of his desire to purchase the tug, was that it was for use in the towing of logs in Alaskan waters; that the matter of picking up the barge was a matter that developed later; and was an incidental use purely because he had purchased this barge down in California.

Q. And this conversation about the river transportation that the vessel had been used in—that did not occur April 1st, as I understand it?

A. No, my recollection is that that was——

Q. (Interposing): That was when the Andersons—father and son—came to your office?

A. That was as of the time of May 21st.

Q. Did he say what river it had been used on?

A. No. It was purely a general statement in explaining the use of the vessel.

Mr. Aiken: I have no further questions.

(Deposition of Orville H. Mills.)

Redirect Examination

By Mr. Fletcher:

Q. As to this trip to the South, did he state what he was going to do with the barge?

A. I cannot say that there was any statement made as to what he was going to do with the barge.

Mr. Fletcher: I have no further questions.

The Witness: The barge was a barge that was purchased Surplus down in California, and the only element of the tug being involved was, and I would not swear that it was even at the conversation of April 1, that the barge was brought in, but I do recall that he did state at some time that he intended to use this tug for the purpose of going down and picking up a barge in California.

Mr. Fletcher: I have no further questions.

Mr. Aiken: I have no further questions.

Mr. Fletcher: Just one thing more. Mr. Mills, do you consent to waiving your signature to your deposition?

Mr. Mills: Yes.

(Deposition concluded.)

## Certificate

State of Washington,  
County of King—ss.

I Hereby Certify that on the 12th day of April, 1951, at the hour of 11:00 o'clock a.m., before me, E. E. Lescher, a Notary Public in and for the State of Washington, residing at Seattle, Washington, at 656 Central Building, Seattle, King County, Washington, personally appeared, pursuant to stipulation for taking depositions, hereto annexed, Orville H. Mills, a witness called on behalf of the Plaintiffs in the foregoing entitled and numbered cause, for the purpose of giving his deposition pursuant to the provisions of the Rules of Civil Procedure of the District Court of the United States.

Robert L. Fletcher, Esq. (of Messrs. Chadwick, Chadwick & Mills) appearing as attorney and counsel for and on behalf of the Plaintiffs; and

Wallace Aiken, Esq. (of Messrs. Emory & Howe) appearing as attorney and counsel for and on behalf of the Defendants; and

The above-named witness being by me first duly sworn to testify to the truth, the whole truth and nothing but the truth, and being carefully examined, deposed and said as in the foregoing deposition set out.

I Further Certify that the said deposition was taken down by me stenographically and thereafter reduced to typewriting under my personal supervision; that the transcript of the said deposition is

a true and correct transcript of the proceedings and testimony given on the taking of said deposition; and that the said deposition has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court as required by law.

I Further Certify that the signing of the said deposition by the said witness was expressly waived by counsel for the respective parties, and by the witness himself.

I Further Certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause.

Witness My Hand and Official Seal at Seattle, King County, Washington, this 23d day of April, 1951.

[Seal]     /s/ E. E. LESCHER,

Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed April 24, 1951.

[Title of District Court and Cause.]

DEPOSITION OF TED ENGSTROM TAKEN  
BY THE PLAINTIFFS

Pursuant to stipulation, on this 12th day of April, 1951, at the hour of 3:00 o'clock p.m., at 656 Central Bldg., Seattle, King County, Washington, the deposition of Ted Engstrom, a witness called on behalf of the plaintiffs in the above-entitled and numbered cause of action, was taken before Glen W. Walston, a Notary Public in and for the State of Washington, residing at Vashon.

Appearances:

The plaintiffs appearing by  
ORVILLE H. MILLS, ESQ., of  
CHADWICK, CHADWICK & MILLS,  
Their Attorney and Counsel;

The defendants appearing by  
WALLACE AIKEN, ESQ.,  
Their Attorney and Counsel.

Thereupon, the following proceedings were had and testimony given, to wit:

Mr. Mills: Let the record show this deposition is being taken pursuant to stipulation, copy of which is attached, of a witness called on behalf of the plaintiff.



TED ENGSTROM

being first duly sworn by the Notary Public, and being carefully examined, testified as follows:

Direct Examination

By Mr. Mills:

Q. Will you state your name, please?

A. Ted Engstrom.

Q. What is your employment?

A. Well, I have got so many titles I don't know which one to tell you. Sometimes I am referred to as field engineer, and at other times as technical supervisor; and at other times as mechanic—whatever the case happens to be.

Q. With what company?

A. Fairbanks-Morse & Co.

Q. How long have you been employed by them?

A. Eleven years.

Q. In general, in what business is Fairbanks-Morse engaged?

A. In the engine business, scale business, pump business, electrical business, and some appliances.

Q. Do they have any volume of business in the repair of marine engines?

A. Well, comparable with the rest of the companies, I imagine.

Q. You have some volume in that business?

A. Yes, sir.

Q. What are your particular duties in connection with that?

(Deposition of Ted Engstrom.)

A. Installation and repair of engines.

Q. Does that include marine engines?

A. Heavy marine—stationary—whatever it happens to be used for.

Q. Were you, in April of 1947, acquainted with an army tug passenger vessel TP 100?

A. Yes, I saw it.

Q. Which was formerly owned by the Andersons and was purchased by the Owens?

A. I couldn't swear to who owned it, but I had heard it was Mr. Anderson's.

Q. How did you become acquainted with the vessel?

A. Well, we were called in by Mr. Owens, over the phone, to check the condition of the engine.

Q. And did you, personally, check the engine?

A. Yes, sir.

Q. In what condition did you find the engine?

A. As far as I was concerned, it was beyond further use.

Q. Can you, just briefly, outline to us just what the actual condition of the engine was?

A. Well, the actual condition, as I found it—to begin with, the No. 5 piston was tied up with a cable through the outer inspection door of the crankcase; the crankpins, that is what the bearings set on, was scored and burned beyond further use.

Q. Now, that is one crankpin?

A. Yes, the No. 5. That is what I am speaking of now.

(Deposition of Ted Engstrom.)

Q. All right. Go ahead.

A. Now, we will start out. All main bearings were either completely wiped out, or the babbitt was cracked, with pieces missing.

Q. What else did you find?

A. All main bearing journals scored, and approximately one-eighth inch under the original shaft diameter.

Q. Approximately?

A. One-eighth inch under the original shaft diameter. Plugged water pump; drive gear—teeth missing, and gear beyond further use. Water pump shaft—that is salt and fresh water pump shafts—bent, and bearings beyond further use. That takes care of about all of it.

Q. What was the condition of the crankshaft as to being twisted or warped?

A. In the position of the No. 5 bearing, in relation to the crank webs, the shaft was distorted 3/64ths of one inch.

Q. A layman would probably refer to that as being warped or twisted?      A. Yes, sir.

Q. What was the condition of the oil columns used in the lubrication of the engine?

A. I haven't got down into the base there yet. The oil columns through the main bearing webs were packed solid with babbitt, the full length.

Q. Did that clog the oil columns?

A. That is right. It caused total restriction.

Q. Was there any temporary——

A. Temporary tubing?

(Deposition of Ted Engstrom.)

Q. Temporary system?

A. Yes, a temporary system had been installed by tapping the lower oil header and running a tube to the bottom of the main bearing bosses. There was a little complaint of the bottom header, running fore and aft the length of the engine, was stopped up with babbit at various places. I might also add that the lower base of the engine, due to intensive heat, had warped considerably.

Q. That was the base of the engine? The base of the engine itself was warped?

A. The lower base, or what we think of as the crankcase, and its component parts.

Q. You say that would be the result of heat?

A. Yes, sir.

Q. What would that indicate to you?

A. That would indicate to me that sometime or other, the engine had run totally out of oil, letting the shaft down and giving a metal-to-metal contact between the steel bearing shells and the crankshaft, to the extent that considerable friction was set up, causing a fire in the base.

Q. What would the clogging with the melted babbitt indicate to you?

A. It would indicate to me that when this oil supply to the bearings stopped, the bearings were wiped out. I mean by that, they attained a temperature high enough to melt the babbitt, which ran down into the holes into this oil column where the oil was supposed to come.

Q. Now, to ascertain this condition of the en-

(Deposition of Ted Engstrom.)

gine, was it necessary to tear the engine down completely?      A. Absolutely.

Q. How complete an overhaul, or tear-down was that?

A. That was removing the shaft and installing a new one.

Q. How did you remove the shaft?

A. The upper base, cylinder head and manifolds, were lifted off the lower base to a height of about 30 to 32 inches; the shaft was then moved out laterally, or fore and aft, out through the aft end of the base, through a door out into the aft hold, a small piece of hatch coaming taken off, and it was lifted off with a crane.

Q. In your opinion, was that the most efficient method of removing the shaft?

A. That is my idea of it.

Q. Would it be possible to remove the shaft through the stack?      A. It is possible.

Q. How would you compare the time and expense consumed in that manner?

A. I would say the time and expense would have been, probably run seven to eight times as great as the other.

Q. It would have been seven or eight times as expensive to remove it through the stack as to use the method in which it was actually taken out?

A. That is right.

Q. In addition to the complete replacement of the shaft, did you make a complete overhaul of the engine itself?

(Deposition of Ted Engstrom.)

A. Yes, the pistons were removed and checked as to the condition of the piston surfaces, wrist pins and bearings. The wrist pin bearings—their condition was good.

Q. You had nothing to do with the tail shaft overhaul or repairs? A. No.

Q. Are you acquainted with the amount of the charge for the service rendered in connection with the overhaul? A. No.

Q. And the statements as submitted for Fairbanks-Morse would speak for themselves on that?

A. Yes, sir.

Q. I have just one more question. In your opinion, was the work performed in the most efficient manner, and with the least expense?

A. Yes, sir.

Q. And was the work which was performed necessary to place the engine in good condition?

A. Yes, sir; it was.

Mr. Mills: You may cross-examine.

### Cross-Examination

By Mr. Aiken:

Q. When did you first see this vessel?

A. You mean the date? That I couldn't tell you, unless I went back into the files in the office.

Q. Have you got an approximate date when you first saw it? A. No.

Q. You don't recall the date when you saw the vessel? A. Not right away.

Q. Do you remember where you saw it?

(Deposition of Ted Engstrom.)

A. At the Stikine Fishing Company dock. That is where I originally went to work.

Q. Where is that?

A. At 740 Westlake North.

Q. That is in Lake Union, then?

A. That is the southernmost point of Lake Union—at Westlake and Roy.

Q. Do you know whether or not the vessel got there under its own power?

A. I have no idea.

Mr. Aiken: Off the record for a moment.

(Discussion off the record.)

Q. (By Mr. Aiken): Well, when you went aboard, did it appear to you that the engine had been recently operated?

A. Well, that I couldn't say, either.

Q. It is true, isn't it, that really, all this damage you have mentioned was due to lack of oil, and excessive heat and friction was a result of it?

A. Yes, sir.

Q. In the eleven years you have been with Fairbanks-Morse, your time, or a good proportion of it, has been devoted to Fairbanks-Morse engines; isn't that true?      A. Yes.

Q. Of this particular type?      A. Yes, sir.

Q. In your past experience, have you ever seen an engine suffer from the same type of damage?

A. Yes, sir.

Q. Would this be because of the complete lack of oil?      A. Yes, sir.

(Deposition of Ted Engstrom.)

Q. If an engine had complete lack of oil, how long would it need to run to generate sufficient heat to cause all this destruction?

A. That is hard to say. There is oil that gets there—if there is a total lack of oil in the base, that doesn't totally starve the bearings, because there is oil from some other sources, such as off the pistons, or the drain ring at the bottom of the cylinder that does drop some oil on the shaft.

Q. Well, with oil from this source dropping on the crank, how long could an engine of this type operate before this damage would be caused?

A. I might state here again, that at the time this engine was opened up, it wasn't totally dry of oil. The fact that these various tubes had been put into use, besides these stopped-up passages, so that the shaft did have some oil. In other words, an engine of that make, if the oil were totally taken away from it, it would turn into complete seizure in two hours.

Q. In the condition it was in, could it operate?

A. It could run.

Q. How long could it run?

A. From the condition I found, if it was actually being run—I mean, not at full R.P.M.—full load—it would probably run 24 to 36 hours.

Q. Did you speak to Mr. Owens at all?

A. You mean, at that time?

Q. Yes.           A. Yes.

Q. Did he tell you what use he had made of the tug?



(Deposition of Ted Engstrom.)

A. As far as I know, he hadn't made any use of it up to that time.

Q. Did he tell you how long he had owned it?

A. No.

Mr. Aiken: Off the record.

(Discussion off the record.)

Q. (By Mr. Aiken): What portion of this damage you have referred to was visible when you examined the engine, without having torn anything down?

A. Well, the only thing visible was No. 5 crank-pin.

Q. Was there anything you observed that led you to believe, before it was torn down, that you would find this damage?      A. Yes.

Q. What did you observe?

A. Small pieces of babbitt in the base.

Q. Describe to me what the base is.

A. That is the bottom of the engine—the crank-case.

Q. That is visible from just standing there and looking?

A. Well, the door was off this No. 5. So I looked at the pin—you could look into the base, and I saw these little pieces of babbitt.

Q. And that would indicate?

A. That babbitt had to come from some place, so then I started looking.

Q. What else, from your examination, did you

(Deposition of Ted Engstrom.)

observe was injured before you started to remove the base of the engine?

A. I noticed the shells of the bearings had the edges turned out.

Q. What did that mean to you?

A. Extra hard metal-to-metal contact had taken place.

Q. What else did you observe?

A. I observed the clearance between the shaft and the upper half of the bearing was unreasonable. Where we allow on the shaft .004, that shaft had 3/32nds of an inch clearance.

Q. That was visible?           A. Yes, sir.

Q. What else was visible?

A. The general appearance of the base. The paint on the base, particularly in the region of the main bearings bosses, which retain the main bearing shells, was showing discoloration of the paint, or charring of the pigment in the paint, indicating intense heat had been there.

Q. What else was visible to indicate there had been intense heat?

A. That is all, from the standpoint of just looking, without opening anything up.

Q. These visible defects of the pieces of babbitt and of the charred paint which you observed, indicated there would be internal damage?

A. That is right.

Q. You are sure this was No. 5 and not No. 3?

A. It was No. 5.

Q. If that engine had been started, would it

(Deposition of Ted Engstrom.)

have made a noise or something else that would show that there was something wrong?

A. Not necessarily.

Q. Why do you say "Not necessarily"?

A. It was a two-cycle engine and all pressures are down.

Q. You mean that engine could be started and operated, and if a person didn't examine it from the outside—say, he stood away in the cabin—would there be a burning-oil smell, for instance?

A. Possibly, but very slight.

Q. What I am getting at: If that engine had been turned over in operating, could you hear any noise, would there be any smell or vibration, or something else that would immediately draw your attention to the fact there were possibilities of internal damage?

A. If you are speaking of noise, that particular engine of that type—the bearings would have to have an unreasonable clearance before you would hear any noise; and particularly the crankshaft bearings. That wouldn't apply so much to the main bearings. Smells are hard to ascertain, because the crankcase is closed.

Q. But in the condition in which this engine was, wasn't there any damage to the crankcase which would have permitted fumes to come into the engine room?

A. There would be some, but unless you were looking for it—

(Deposition of Ted Engstrom.)

Q. But a rough inspection by you, as an expert, showed there was internal injuries?

A. Yes, sir.

Q. My question is: Would a reasonable operation of the engine disclose defects of some kind? I mean, a trial run?

A. You mean, as to noise or smell?

Q. Yes.

A. Some noise—not too much to speak of.

Q. Not to a layman, but to you, as a practicing engineer? Would there be tappet noise?

A. There is no tappets on this.

Q. I realize that, but there would be some kind of noise?

A. There would be a heavier noise—a thud.

Q. That wouldn't exist in an engine in good condition?

A. That is right.

Q. So that there would be some strange noises? To a layman?

A. There might be detonating noises in the cylinder itself, which sometimes are thought to be in the base—in the crankshaft or the bearings.

Q. Did you observe the condition of the vessel, other than around the engine?

A. I did.

Q. What did you observe?

A. Well, I was standing on the dock there one day and I happened to be looking down at the waterline, and saw quite a sliver of wood—about a foot under water—on the forefoot.

Q. That is, you viewed that while standing alongside the vessel?

A. Yes.

(Deposition of Ted Engstrom.)

Q. What did that indicate to you, or did it indicate anything?

A. I talked to Mr. Owens' representative, who was aboard at the time, and told him there might be some damage. He didn't think so, and I told him he had better get a skiff and look down there, as from what was visible there seemed to be some damage to the forefoot.

Q. How much damage? In viewing it from the dock, there appeared to be some damage?

A. It appeared so.

Q. What else did you observe?

A. That is all, except what I seen on the dry dock.

Q. Do you know what this damage was? When this individual took the skiff and checked it?

A. Yes.

Q. What did that person say?

A. He brought it to Mr. Owens' attention.

Q. What did Owens say?

A. I wasn't there.

Q. Did this person in the skiff say anything to you?

A. Looks like there is something wrong down there—that is all he said.

Q. You were standing on the dock when you saw this sliver?

A. Yes, sir.

Q. So that the sliver would have been four or five feet below you? Or how much?

A. I couldn't say. It is pretty hard to judge

(Deposition of Ted Engstrom.)

from the dock, but the water was quite clear and it was easily visible.

Q. That water in Lake Union is fresh water?

A. Yes.

Q. Do you know where the Olson & Wing Machine Works are?           A. Yes.

Q. That is on the same body of water?

A. Yes.

Q. From your experience along the water canals and the lake, is the cleanliness of the water about the same?

A. I would say so. It depends on the sky, somewhat. When the weather is dark, the water is dark.

Q. Is the water generally muddier than at the Olson & Wing location?

A. I don't know. It is all the same, as far as I know.

Mr. Aiken: I have no further questions.

### Redirect Examination

By Mr. Mills:

Q. Do you know when this matter of your seeing the sliver, with reference to when it was being put up on the dry dock—just roughly, what was the relationship in time?

A. I see so many boats and so many engines, I don't remember whether the boat ran down under its own power, or whether it was towed down. No, I couldn't answer the question.

Q. And you don't remember when it was, with

(Deposition of Ted Engstrom.)

reference to the time you were working on that job?      A. No.

Q. How long were you on that job, approximately?

A. As far as I can remember, it was about 25 to 28 working days.

Q. And the situation that you saw was about how far below the waterline?

A. Well, that is awfully hard to say—to judge the distance when you are standing on the dock. I would say it was anywhere from one to two feet.

Q. The only inspection made at the time was by the man going out in a skiff?      A. Yes, sir.

Q. But as far as you know, it was put up on the dry dock?      A. Yes.

Q. Did you attempt any turning of the shaft without taking it out?      A. No.

Q. When you say the No. 5 crankpin was exposed, how much of an operation is that—to open up and expose the No. 5 crankpin?

A. The No. 5 crankpin was exposed.

Q. Well, how much of a job would it be to open it up to expose it?

A. You mean, just take the inspection door off, and look in the base?

Q. For the purpose of the record, how would you go about looking at No. 5 crankpin?

A. You would take the inspection door off—it would take about five minutes.

Q. Just a simple operation?

A. Yes, sir. But the door was already off.

(Deposition of Ted Engstrom.)

Q. At the time you went up there?

A. Yes.

Q. And the first thing that called your attention to the fact there might be trouble was the presence of the babbitt? A. Yes.

Q. Could that have been from No. 5 crank pin?

A. It could have been.

Q. You have had eleven or more years of experience as a mechanical engineer with Fairbanks-Morse?

A. I have got in thirty years, altogether.

Q. Thirty years, all told? When you say these various indications are apparent to you, are you speaking from your standpoint as a professional expert on the subject? A. Yes, I am.

Q. Would they have been apparent to the layman, looking casually at the engine, in connection with looking at the boat?

Mr. Aiken: Don't answer that. I will object to that as calling for a conjectural answer, not having laid a proper foundation, and it is irrelevant.

Mr. Mills: You can answer the question.

The Witness: Are you referring to a layman, or to an operating engineer?

Mr. Aiken: I will object to the question on the same grounds.

Mr. Mills: Off the record.

(Discussion off the record.)

Q. (By Mr. Mills): Assuming, Mr. Engstrom, a logger who is logging in water, with some knowl-



(Deposition of Ted Engstrom.)

edge of tugs and of boats, and looking for a tug to purchase, would the trouble signs you have pointed out have been readily apparent on examination of the vessel by such a man?

Mr. Aiken: I object to the question as being without the scope of the issues in this action, and also as calling for a conjectural answer, and not proper testimony to be adduced from an expert witness.

Q. Can you answer the question?

A. No. That is a hard-put question.

Q. In your looking for these trouble signs, did you make some detailed examination to find those trouble signs?

A. No, I made the examination from the visual appearance.

Q. Did you take the measurements of the shaft, etc.?

A. Later on, I did.

Q. But your first observation that the shaft was out of line was entirely visual?

A. There is only one way you can determine the actual condition of a shaft, relative to its being straight, and that is to remove the shaft and put it in a lathe, between centers.

Q. But in your visual examination and determination that there was something wrong, you had the benefit of some thirty years of experience in the field, and were then able to ascertain what the extent of the damage was by actual physical taking the engine down?

(Deposition of Ted Engstrom.)

A. That is right. May I say something?

Mr. Mills: Go ahead.

The Witness: Oh, I was just thinking—you can put it down if you want to, but I was speaking of the babbitt in the base. So far as an engineer is concerned—an operating engineer that had not been near the engine to take a look at the No. 5 piston, might have thought—and I might have thought it myself—that the babbitt in there was from the No. 5 bearing and from the No. 5 bearing alone, if I hadn't made a further examination.

#### Recross-Examination

By Mr. Aiken:

Q. In this situation, the babbitt was only under No. 5, but these other outward indications of internal injury were present?      A. That is right.

Q. How were the other general conditions of the boat? You mentioned a sliver on the forefoot, and you mentioned the engine—what about the paint and the other fixtures—did you observe those?

A. Well, I would say that, of course, you must remember I wasn't interested in the general condition of the vessel, but from appearances, it was good.

Q. It was good?      A. Yes, sir.

Mr. Aiken: I have no further questions.

Mr. Mills: No further questions.

(Witness excused.)

(Deposition concluded.)

Certificate

State of Washington,  
County of King—ss.

I Hereby Certify that on this 12th day of April, 1951, at the hour of 3:00 o'clock p.m. at 656 Central Bldg., Seattle, King County, Washington, the deposition of Ted Engstrom, a witness called on behalf of the plaintiffs in the above-entitled and numbered cause of action, was taken before me, Glen W. Walston, a Notary Public in and for the State of Washington, residing at Vashon.

The plaintiffs appearing by Orville H. Mills, Esq. (of Messrs. Chadwick, Chadwick & Mills), their attorney and counsel; and

The defendants appearing by Wallace Aiken, Esq., their attorney and counsel.

The above-named witness, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, deposed and said as in the foregoing deposition set out.

I Further Certify that said deposition has been reduced to typewriting under my personal supervision; that the same is a true and correct transcript of the testimony of the witness, given on his said deposition; and that the original of said deposition has been retained by me for the purpose of sealing up same and directing to the Clerk of the Court, as required by law.

I Further Certify that I am not of counsel nor

attorney to either or any of the parties, nor am I interested in the event of the cause.

Witness My Hand and Official Seal at Seattle, this 23rd day of April, 1951.

[Seal] /s/ GLEN W. WALSTON,  
Notary Public in and for the State of Washington,  
Residing at Vashon.

[Endorsed]: Filed April 24, 1951.

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[Title of District Court and Cause.]

DEPOSITION OF DAVID ELDON ERICKSON,  
A WITNESS ON BEHALF OF THE DE-  
FENDANTS

Pursuant to stipulation for taking depositions, hereto annexed, on this 12th day of April, 1951, at the hour of 10:00 o'clock a.m., the deposition of David Eldon Erickson, a witness called on behalf of the Defendants in the above-entitled and numbered cause, was taken at 656 Central Building, Seattle, Washington, before E. E. Lescher, a Notary Public in and for the State of Washington, residing at Seattle.

Appearances:

The Plaintiffs Appearing by:

ORVILLE H. MILLS, of  
CHADWICK, CHADWICK & MILLS,

Their Attorney and Counsel.

The Defendants Appearing by:

WALLACE AIKEN, of  
EMORY & HOWE,

Their Attorney and Counsel.

(Thereupon the following proceedings were had and testimony given:)

DAVID ELDON ERICKSON

called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Aiken:

Q. Will you please state your name?

A. David Eldon Erickson.

Q. And what is your address, where do you live?

A. 1805 West 95th.

Q. Seattle?           A. Seattle.

Q. And what is your present occupation?

A. Salesman for the Northern Commercial Company.

Q. In what division?

A. In the Marine Division, marine engines.

Q. What particular field or types of marine engines?

A. Well, we specialize in fishing boat engines and tugboats; and occasionally, we build boats and power them and sell the whole boat.

(Deposition of David Eldon Erickson.)

Q. Have you had experience in that field other than selling?      A. I have.

Q. What is that experience?

A. With Olson and Winge Marine Works.

Mr. Mills: How do you spell that "Wing"?

The Witness: W-i-n-g-e (spelling).

Q. (By Mr. Aiken): Where are they located?

A. They are located at 4125 Burns Avenue, Northwest.

Q. In Seattle?      A. That is right.

Q. And what were your duties there—what was their business?

A. Boat building and repairing.

Q. When were you employed by them?

A. I was employed in 1940. I started in 1940 and stayed with them until March of 1944, when I was inducted in the Navy. I returned in March of 1946 and stayed with the company until about October of 1948, when I joined the Northern Commercial Company.

Q. Are Olson & Winge still in business?

A. No, sir.

Q. And what was your capacity or duties with Olson & Winge?

A. I was assistant production manager.

Q. And what were your duties?

A. My duties were to oversee work done on vessels; to work with the owners, with respect to the type of work to be done, and the specifications, and to expedite materials; generally work in a supervisory capacity.

(Deposition of David Eldon Erickson.)

Q. And most of that work was with fishing boats and tugs?      A. That is right.

Q. Are you acquainted with Mr. Anderson, the defendant?      A. Yes, I am.

Q. And when did you first meet him?

A. In 1947.

Q. And what were the circumstances, or where did you meet him?

A. He had a power scow, the Lois Anderson, that we did some work on, and also he moored the Helen A, a tugboat—a surplus tugboat, at our dock.

Q. And the Helen A is the tug that is involved in this litigation?      A. Yes, sir.

Q. Have you been aboard the Helen A, or were you aboard the Helen A during the period that it was moored there?      A. Yes, I was.

Q. Are you acquainted with Mr. Owens?

A. Yes, I have met Mr. Owens.

Q. Where and when?

A. Mr. Owens came into the yard and inquired in the office if there was a tugboat for sale moored at our dock, and I said the only one that I knew of was Mr. Anderson's—the Helen A, a surplus tug.

So he said, "Well, may I see it?" So I took him on board and showed him around the vessel.

Q. What did you show him? First, was there anybody else present at the time that you were on the vessel?

A. As I recall, there were some crew members present. I do not recall who in particular were present. However, when Mr. Owens came into the

(Deposition of David Eldon Erickson.)

yard it is, or was the general practice that we accompany them when they go aboard other boats that are moored at the dock, and I took him aboard and showed him around, and I told him everything that I knew about the boat.

I didn't know any prices, or anything of that nature. I just would do that for any customer that had his boats moored at our dock.

Q. What did you show him on board the vessel?

A. I showed him in particular the obvious damage that I had known about, because we had estimated the work to be done in connection with fixing it up, which were, mainly, the damaged crank journal in the main engine, and the damage in the stem.

Q. How did you know that the crank journal was damaged?

A. It had been pointed out to me by Mr. Anderson, and we examined it at the time, previous to this time when Mr. Owens came there, with a view of estimating the job and fixing the same up, and at the time the side plate was removed from the engine so that you could see in it with the crank throw removed from the journal.

Q. What was the condition of the stem?

A. The condition of the stem showed bruises and damage. However, there was not too much evidence of it from above the waterline, as I recall.

Q. Well, what was the damage visible above the waterline?

A. Well, it showed a bruise—bruises and slivers



(Deposition of David Eldon Erickson.)

from the stem. It was hard to determine exactly the extent of the damage.

Q. Could you describe it in comparative terms? Did it look like ordinary wear and depreciation?

A. No.

Mr. Mills: I object to that as leading. Let him describe it.

A. It was more obvious than that it was normal wear and tear. It definitely had struck an object of some nature.

Q. (By Mr. Aiken): And was this bruised condition from the deck down, or just where with relation to the waterline?

A. As I recall it, it was fairly close to the waterline; probably within a foot or two of the waterline.

Q. What color was the tug then painted?

A. It was the Army color. It was a sort of a bluish grey.

Q. And what was the general condition of the cleanliness of the vessel and the paintwork and the condition of the rest?

A. I would say average.

Q. And by "average," what do you mean?

A. It had just come down from the North, and it was moored at the dock, and they had not really started to clean it up for the next season. I say, therefore, it was average. It probably needed a coat of paint pretty much all the way around.

Q. And did Mr. Owens make any statement to you during this time that he was there other than

(Deposition of David Eldon Erickson.)

this preliminary conversation that you have related?

A. No, I do not think that Mr. Owens had much to say. I was more or less a disinterested person, anyway, and I just showed him what I knew of the boat, and I don't remember him saying anything in particular.

Q. Did he ask you, by the way, about the estimated cost of repairs?

A. I don't recall that he did.

Q. Was there any conversation about whether the vessel had been dry-docked?

A. I don't recall that, either.

Q. Prior to this, had you given any estimates for the repair of the vessel?

A. We had. Inasmuch as it was at the yard, it naturally was at the yard for some sort of repair work, and it had been discussed from the standpoint of the obvious damage shown, as to the extent of the damage, and we had made an oral idea of what we thought the damages would amount to, to fix it up, from what we could see.

Q. And to whom did you make that?

A. To Captain Anderson.

Q. To the defendant? A. Yes.

Q. And what was the price?

A. Approximately five thousand dollars.

Q. And was that in the nature of a firm commitment, or what?

A. No, it was not a firm commitment. It was just an approximate figure based on our experience.

(Deposition of David Eldon Erickson.)

However, when you open up the stem job of that nature, or of any nature, that is, in marine work, it is difficult to give an exact price until the work is opened up and you can actually see the extent of it. So it was an approximate estimate.

Mr. Mills: At this point, I would like the record to show that the plaintiffs move that the testimony given in response to the question be stricken, as to the estimate, on the basis that it was not a fair estimate, as shown by the testimony, of the repair of the actual damage, but it was merely an estimate without full knowledge of the damage, and that the response is, therefore, not material to any issue in this lawsuit.

Q. (By Mr. Aiken): Did you at any later time make any repairs on this vessel?           A. No.

Q. And you have no personal knowledge of what repairs were thereafter made to the vessel?

A. No, I have not.

Q. Have you repaired in your experience vessels with somewhat the same bruises?

A. Oh, yes; we have made many similar repairs.

Q. And in making this estimate, were you considering your past experience with respect to the cost?           A. Yes.

Q. And for the repair of the engine and the stem damage above the water, what would your estimate be?

A. For the repair of the engine and the stem damage?

Q. Yes, above the water.

(Deposition of David Eldon Erickson.)

Mr. Mills: Let me have an objection to that as irrelevant and immaterial, and not a proper question within the issues of this case.

That does not state the elements of damage which are involved in the repair in this case, and does not fix it as to time or other essential elements.

Q. (By Mr. Aiken): This conversation and visit by Mr. Owens was approximately when, do you recall?

A. Sometime in March of 1947, I believe.

Q. And that was before the sale of the vessel, of course?           A. I think so.

Q. Now, back to this other point: Your estimate, was it one for work that was visible above the water, or did it cover or contemplate underwater damage?

A. Yes. That was based on what we felt we might find there. As I said before, it was strictly an estimate. It is difficult to find out exactly what a job of that nature is worth. I might add, as far as the engine work was concerned, we consulted Wilson Machine Works, whom we felt were the best people in town for the job of putting the crank journal in place. They have the tools, and we consulted them as to what their approximate idea of their part of the subcontract would be worth, so that we could base that in the estimate.

Q. And what was that figure?

A. I don't recall the exact figure.

Q. Mr. Owens didn't ask you anything about what it would cost to repair, did he?

(Deposition of David Eldon Erickson.)

A. I do not remember him saying a great deal of anything. He seemed to be interested in the tug, but I do not recall him having a great deal to say other than just looking about.

Mr. Aiken: I have no further questions.

### Cross-Examination

By Mr. Mills:

Q. Will you fix the day of this visit by Mr. Owens at the very nearest that you possibly can?

A. Sometime in March of 1947 is about as close as I can tell, from the date of the sale. It was sometime prior to that. I cannot fix the exact date.

Q. Judging from the date of the sale?

A. Yes.

Q. Now, how did you fix the date of the sale?

A. Well, I understood you to say that it was around the first of April.

Q. You understood me to say that it was around the first of April?

A. Or someone in this room. I knew that it was sometime in March of 1947, but the exact date, I cannot tell you, sir.

Q. I may be in error, but I do not think that I heard the first of April mentioned. Have you discussed this with Captain Anderson?

A. No, not as far as the actual date is concerned. No, sir.

Q. But you have discussed the matter of your testimony with him, have you not?

(Deposition of David Eldon Erickson.)

A. He asked me if I recalled the incident and the tug, and I told him that I did, because, after all——

Q. (Interposing): I am interested in where you got the date of the sale.

A. Mr. Owens mentioned it just prior to taking this testimony, as I recall. He said, "Approximately, you will remember it was around the first of April."

Q. That was while we were off the record?

A. Yes.

Q. In your direct examination, you said that you took him around the vessel and showed him the obvious damage? A. That is correct.

Q. Now, what was the obvious damage?

A. The damage on the stem and the damage on the engine that I have mentioned.

Q. Let us take the damage on the stem first. Exactly where was the damage evidenced on the stem?

A. As I remember, it was a foot or two above the waterline. It showed bruises from there on down.

Q. A foot or two above the waterline?

A. Yes, as I recall, and then it showed apparently that there had been a blow even below the waterline, indicating that it could be into the fore-foot.

Q. The vessel at that time was at Olson & Winge's Yards at——

(Deposition of David Eldon Erickson.)

A. (Interposing): Out at the foot of Eighth Avenue, Northwest.

Q. At the foot of Eighth Avenue, Northwest?

A. Yes, sir.

Q. In what is Salmon Bay?

A. Ballard or Salmon Bay.

Q. Out in Ballard? A. Yes, sir.

Q. The water there is rather riled and dirty, is it not?

A. It is not particularly clear, no.

Q. How far down could you see on the stem and forefoot?

A. Oh, you might see easily six inches.

Q. Six inches or so?

A. That is about all.

Q. Had you ever had the vessel out of the water? A. No.

Q. Had you ever gone down to inspect the forefoot below the waterline?

A. No, other than visual from the deck.

Q. Visual from the deck? A. Yes, sir.

Q. And it was limited to about six inches, visual from the deck?

A. I would say that that was approximately it.

Q. Now, in your estimate then you were going entirely upon what was shown above the waterline and what you could see within the six inches below the waterline; is that correct?

A. Yes, but we suspicioned that there was possibly some damage to the forefoot by the visual

(Deposition of David Eldon Erickson.)

examination. After all, we look at any number of boats, and give an idea of what we feel that the job would run and——

Q. (Interposing): But your suspicion as to the damage below would be predicated on what you saw above the waterline or within that six inches, as indicating the force of some blow there; is that right?

A. Yes, I would say that that is right.

Q. Did that indicate to you a blow of sufficient force to have completely shattered the forefoot down to the keel?      A. It is possible.

Q. It is possible?      A. Yes, sir.

Q. In your looking at it, did you contemplate replacing the stem and the forefoot down to the keel?      A. Yes, I would say so.

Q. Did the damage to the forefoot, as you saw it, indicate a blow sufficient to have shattered the keel back from the forefoot?

A. Well, of course, that would be a very difficult question to answer. It would be necessary to look at it further in dry dock.

Q. Did it indicate that?

A. I would not think so.

Q. And did your estimate take into consideration any replacement of the keel?      A. No.

Q. And you never went below the waterline?

A. No.

Q. Now, when you speak of an estimate, Mr. Erickson, generally you make an estimate of what



(Deposition of David Eldon Erickson.)

the cost is based upon a known factor condition; is that right?

A. As closely as we can tell, yes.

Q. And then when you get into the job and find that the facts indicate extensive or greater damage, your price goes up?

A. Well, that is only natural.

Q. That is right. And in this case, if you had gotten into it and found a shattered forefoot down to the keel, with a shattered keel back for a number of feet beyond the forefoot, your price would have gone up considerably, would it not?

A. Well, that is possible. It depends on how the job goes and how difficult it is to make any repairs, and it is not very long then that you do get a set contract, or we would give a set contract on a job of that nature, because there are always contingencies that arise.

Q. So that at best your figure——

A. (Interposing): Was an estimate.

A. Yes.

Q. Your figure here was purely an estimate?

Q. Without any survey of the vessel to find out——

A. (Interposing): Other than what we could see visually and again from the talk that we had with Captain Anderson as to the extent that he believed that the damage was.

Q. Did Captain Anderson tell you at that time what he had struck?      A. I don't recall.

Q. Did he tell you what the damage was?

(Deposition of David Eldon Erickson.)

A. Well, he said that there was damage in the stem or in the forefoot.

Q. Now, Mr. Erickson, normally you would, of course, take the vessel up on the ways before making any final estimate as to the repairs, would you not?      A. That is correct.

Q. So that actually your figure that you were discussing was purely and simply a preliminary figure based on what you could see above the waterline and down to six inches below the waterline, or roughly, six inches?

A. Well, it gives us a pretty fair indication of what we would expect.

Q. Now, what about the engine? Did you do engine work out there?      A. Yes, sir.

Q. You spoke of subcontracting this.

A. The reason why I spoke of the subcontracting was the fact that the crank journal itself was scored, and as one firm in town made a specialty of grinding—grinding the shaft in place, so that they would not have to dismantle the engine entirely to make the repairs on the journal, that is the reason why we spoke of subletting it to that firm.

Q. I am a little confused on your term “crank journal”; is that what is also referred to as a crank-pin?

A. Yes, it could be. The crankshaft has a number of journals—you see—and each journal is where a bearing is fastened to. There are main bearing journals and crank bearing journals, and this happened to be a crank bearing journal.

Q. In other words, there was one crank bearing

(Deposition of David Eldon Erickson.)

journal—

A. (Interposing): That was damaged.

Q. That was damaged as you saw it?

A. That is right.

Q. You had never taken the engine apart, or taken the engine down, had you?      A. No.

Q. And the figure or estimate that you spoke of then is based merely upon that apparent damage—      A. (Interposing): That is right.

Q. To the one crankpin or crank journal?

A. That is right.

Q. And that is what you indicated to Mr. Owens as being damage to the engine?

A. Obvious damage.

Q. And as to the stem, what you indicated to Mr. Owens was what you could see above water and down to six inches below?      A. Yes, sir.

Mr. Mills: That is all.

Mr. Aiken: I haven't anything further. Before the witness is excused, Mr. Mills, may we stipulate that the signature of the witness to his deposition is waived, and the reading over of the deposition by the witness is waived?

Mr. Mills: That is satisfactory to me.

Mr. Aiken: And do you, Mr. Erickson, waive the reading of your deposition and waive the signing of your deposition?

The Witness: Yes, sir.

Mr. Aiken: That is all. Thank you.

(Witness excused.)

(Deposition concluded.)

## Certificate

State of Washington,  
County of King—ss.

I Hereby Certify that on the 12th day of April, 1951, at the hour of 10:00 o'clock a.m., before me, E. E. Lescher, Notary Public in and for the State of Washington, residing at Seattle, Washington, at 656 Central Building, Seattle, King County, Washington, personally appeared, pursuant to stipulation for taking depositions, hereto annexed, David Eldon Erickson, a witness called on behalf of the defendants in the foregoing entitled and numbered cause, for the purpose of giving his deposition pursuant to the provisions of the Rules of Civil Procedure of the District Court of the United States.

Orville H. Mills, Esq. (of Messrs. Chadwick, Chadwick & Mills), appearing as attorney and counsel for and on behalf of the Plaintiffs; and

Wallace Aiken, Esq. (of Messrs. Emory & Howe), appearing as attorney and counsel for and on behalf of the Defendants; and

The above-named witness being by me first duly sworn to testify to the truth, the whole truth and nothing but the truth, and being carefully examined, deposed and said as in the foregoing deposition set out.

I Further Certify that the said deposition was taken down by me stenographically and thereafter reduced to typewriting under my personal supervision; that the transcript of the said deposition is a true and correct transcript of the proceedings

and testimony given on the taking of said deposition; and that the said deposition has been retained by me for the purpose of sealing up and directing the same to the Clerk of the Court as required by law.

I Further Certify that the signing of the said deposition by the said witness was expressly waived by counsel for the respective parties, and by the witness himself.

I Further Certify that I am not of counsel or attorney for either or any of the parties, nor am I interested in the event of the cause.

Witness My Hand and Official Seal at Seattle, King County, Washington, this 23rd day of April, 1951.

[Seal]      /s/ E. E. LESCHER,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

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[Title of District Court and Cause.]

STIPULATION FOR TAKING  
DEPOSITIONS

It Is Hereby Stipulated by and between R. Boochever of plaintiffs' attorneys, and William Renfrew of defendants' attorneys, that on behalf of the plaintiffs the oral depositions of T. Engstrom, Orville Mills and H. A. Dent may be taken, and on behalf of the defendants, the oral depositions of Mr. Erickson, Mr. Dawe and Mr. Wilson may be

taken at such times, within thirty days from the date hereof, and places and by such officers as may be mutually agreeable to the firm of Chadwick, Chadwick and Mills of Seattle, Washington, representing the plaintiffs, and the firm of Emery and Howe of Seattle, Washington, representing the defendants, and that duly certified transcripts of said depositions, upon filing with the Clerk of the Court, shall be regarded as introduced into evidence to the same effect as though the testimony had been adduced in open court during the course of the trial of this cause, in the above-entitled case, subject to the court's rulings on such objections as may be made by counsel during the course of the taking of the depositions.

Dated as of this 26th day of March, 1951.

/s/ R. BOOCHEVER,

Of Attorneys for Plaintiffs.

/s/ WILLIAM W. RENFREW,

Of Attorneys for Defendants.

[Endorsed]: Filed April 24, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO  
RECORD ON APPEAL

I, M. E. S. Brunelle, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with the above-entitled action or proceeding, and including specifically the complete record and file of such action, including the bill of exceptions, setting forth all the testimony taken at the trial of the same and all of the exhibits introduced by the respective parties, such record being the complete record of the cause pursuant to the said designation.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above-entitled cause by the above-entitled Court on November 30, 1951, to the United States Court of Appeals at San Francisco, California.

[Seal]      /s/ M. E. S. BRUNELLE,

Clerk of the District Court for the Territory of  
Alaska, Third Division.

[Endorsed]: No. 13313. United States Court of Appeals for the Ninth Circuit. Jack C. Anderson, Sr., and Jack C. Anderson, Jr., co-partners, doing business as Anderson & Son Transportation Co., Appellants, vs. A. E. Owens, Fern Owens, and R. F. Owens, co-partners doing business as Owens Brothers, Appellees. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed March 24, 1952.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 13,313

JACK C. ANDERSON, SR., Et AL.,  
Appellants,  
vs.

A. E. OWENS, Et AL.,  
Appellees.

APPELLANTS' DESIGNATION OF POINTS  
UPON WHICH THEY INTEND TO RELY  
ON APPEAL

Come now Jack C. Anderson, Sr., and Jack C. Anderson, Jr., co-partners, doing business as An-



derson & Son Transportation Company, defendants and appellants in the above-entitled cause, and pursuant to Rule 19 of the above-entitled Court set forth the points upon which they intend to rely on this appeal, namely:

1. That the trial court erred in overruling the motion of defendants made at the close of plaintiffs' case for judgment on the ground that the plaintiffs at the close of their case had failed to show that they were entitled to any relief against the defendants.

2. That the trial court erred in refusing to grant judgment in behalf of the defendants and against the plaintiffs at the close of all the evidence.

3. That the trial court erred in its findings of fact entered in this matter for the reason that such findings of fact are not supported by the evidence.

4. That the trial court erred in entering its conclusions of law in this matter for the reason that such conclusions are not supported by the evidence and are not supported by the findings of fact made by the Court.

5. That the trial court erred in entering judgment in favor of the plaintiffs and against the defendants or in the alternative that the court erred in the amount of the judgment as granted in favor of the plaintiffs and against the defendants in the event any judgment in favor of plaintiffs and against defendants was justified by the evidence.

6. That the trial court erred in granting any judgment in favor of the plaintiffs by reason of the fact that plaintiffs had ample opportunity to inspect the vessel in question and in fact did inspect the vessel in question and were not entitled to rely upon any alleged warranties.

7. That the plaintiffs in fact bought the vessel as it was and not on the basis of any affirmations of fact or warranties made by the defendants and that accordingly plaintiffs have not shown that they were entitled to any judgment against the defendants.

8. That the trial court erred in allowing damages against the defendants and in favor of the plaintiffs on account of matters not contemplated by the parties and for repairs to the vessel made by plaintiffs which were completely outside the scope of the discussions between the parties and not contemplated at all in the discussions between the parties.

9. That the trial court erred in admitting certain testimony and in excluding certain other testimony and in particular erred in admitting evidence of the cost of the vessel to the defendants while refusing to admit evidence concerning the sale price of the vessel by plaintiffs, all of such evidence having been admitted or excluded over the objections of defendants.

10. That the trial court erred in refusing to grant defendants' motion for correction of findings of fact and conclusions of law and defendants'

motion to set aside judgment rendered in favor of plaintiffs and to enter judgment in favor of the defendants or in the alternative for a new trial.

11. That insofar as here applicable defendants by reference incorporate as part of this designation exceptions made on behalf of defendants to the findings of fact and conclusions of law and the judgment rendered by the District Court in this matter and which exceptions are a part of the record on this appeal.

Respectfully submitted,

DAVIS & RENFREW,

Attorneys for Defendants-Appellants Jack C. Anderson, Sr., et al.,

By /s/ EDWARD V. DAVIS.

Receipt of copy acknowledged.

[Endorsed]: Filed May 12, 1952.

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[Title of Court of Appeals and Cause.]

STIPULATION CONCERNING PRINTING  
OF RECORD

It is hereby stipulated and agreed by and between Davis & Renfrew, attorneys for the appellants, and Faulkner, Banfield & Boochever, and John E. Manders, attorneys for the appellees, that the entire record in the above-entitled matter as submitted to the Court of Appeals by the District Court, including all exhibits introduced by both

parties, and together with this stipulation, and together with appellants' designation of points, shall be printed, except those certain portions hereinafter particularly set forth, which are not material to the determination of the questions raised by the appeal in this matter, and which may be omitted from the printed record by the Clerk of the above-entitled Court as follows:

1. Minute Order dated January 19, 1951, having to do with continuance of the trial date.
2. Motion to Set Cause for Trial, filed February 26, 1951.
3. Opening Brief of plaintiff in the District Court filed August 29, 1951.
4. Opening argument of defendant in the District Court filed September 19, 1951.
5. Reply brief of plaintiffs filed November 14, 1951.
6. Notation in file as of December 27, 1951, to the effect that the file had been mailed to Judge Folta at Juneau, Alaska.
7. Order requiring costs and disbursements to be included in the Judgment filed January 21, 1952.
8. Execution dated January 21, 1952.

10. Any and all direct interrogatories propounded to witnesses where such direct interrogatories are made a part of the deposition as filed insofar as they duplicate, the depositions as filed.

11. The two photographs which are admitted as exhibits may be considered by the Court as part of the record without including reproductions of such photographs in the printed record.

Dated at Anchorage, Alaska, this 7th day of May, 1952.

DAVIS & RENFREW,  
Attorneys for Appellants,  
By /s/ EDWARD V. DAVIS.

FAULKNER, BANFIELD & BOOCHEVER, and  
JOHN E. MANDERS,  
Attorneys for Appellees,  
By /s/ R. BOOCHEVER.

[Endorsed]: Filed May 14, 1952.

